

Title 23

BOARD OF PUBLIC WORKS

Subtitle 02 PROGRAM ADMINISTRATION

23.02.04 State Tidal Wetlands Licensing Procedures

Authority: Environment Article, §§16-201 — 16-205; State Finance and Procurement Article, §10-203; Annotated Code of Maryland

.01 Purpose.

A. The purpose of this chapter is to advance the best interest of the State with respect to State tidal wetlands, including preserving the rights of riparian owners.

B. The State holds State tidal wetlands in both a proprietary capacity and in sovereign trust for the benefit of the people of Maryland. In determining whether to issue a State tidal wetlands license, the Board of Public Works has the same discretion that any owner has in deciding whether to grant to another an interest in the owner's property.

C. In applying this chapter to determine whether issuing a State tidal wetland's license is in the State's best interest, it is the public policy of the State, taking into account varying ecological, economic, developmental, recreational, and aesthetic values, to preserve the wetlands and prevent their despoliation and destruction.

.02 Scope.

A. This chapter sets forth the procedures of the Board of Public Works for the licensing of all dredging, filling, or altering of State tidal wetlands. This includes the construction, reconstruction, or repair of structures, or of nonstructural shoreline stabilization measures, on State tidal wetlands.

B. A license issued under this chapter does not convey ownership of lands or the affected air space, or diminish the full and free use and enjoyment by the public of the tidal waters of the State.

C. This chapter does not change the title to submerged lands conveyed to private owners by the State or its predecessors.

D. This chapter does not set forth the complete range of Board of Public Works' fiduciary and proprietary responsibilities relating to private uses of State wetlands. The Board of Public Works may, among other things, address these matters through easement, lease, deed, or other instrument to protect the State's interests or to convey an interest in State wetlands.

.03 Definitions.

A. In this chapter, the following words have the meanings indicated.

B. Terms Defined.

(1) "Administrator" means the Wetlands Administrator for the Board of Public Works.

(2) "Board" means the Maryland Board of Public Works.

(3) "Critical area" consists of the following areas, as indicated on the Statewide Base Map:

(a) All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide;

(b) All State and private wetlands designated under Environment Article, Title 16, Annotated Code of Maryland; and

(c) All land and water areas within 1,000 feet beyond the landward boundaries of the resource identified under §B(3)(a) and (b) of this regulation.

(4) "Department" means the Maryland Department of the Environment.

(5) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells, or other materials, whether or not of intrinsic value, from any State or private tidal wetlands.

(6) Enhancement.

(a) "Enhancement" means the rehabilitation of a degraded wetland site by manipulation of the physical, chemical, or biological characteristics of a wetland site:

(i) To heighten, intensify, or improve a specific function, or functions; or

(ii) For a purpose such as water quality improvement, flood water retention or wildlife habitat.

(b) "Enhancement" results in a change in wetland function, or functions, and can lead to a decline in other wetland function, but does not result in a gain in wetland acres.

(7) Filling.

(a) "Filling" means the:

(i) Displacement of tidal water by depositing into State or private wetlands soil, sand, gravel, shells, or other materials, including pilings, piers, and other structures;

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

(iii) Storm drainage projects that flow directly into tidal waters of the State.

(b) "Filling" does not include:

(i) Drainage of agricultural land;

(ii) *In-place replacement or repair of functional shore erosion control structures using substantially similar materials and construction design; or*

(iii) *Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary.*

(8) *"Interested person" means, an owner of a riparian property contiguous to a parcel for which there is a licensing proceeding, or an individual that comments on, requests hearings for, or makes inquiries about a licensing proceeding.*

(9) *"License" means written authorization by the Board under Environment Article, §16-202, Annotated Code of Maryland, to dredge, fill, construct structures, or conduct certain other activities involving State tidal wetlands.*

(10) *"Licensee" means a person to whom the Department issues a general wetlands license or the Board issues an individual or emergency State tidal wetlands license.*

(11) *"Living shoreline" means an approach that uses plants and sand, rock, oyster shell, or other natural materials to protect shoreline and to create, maintain, or enhance habitat.*

(12) *"Maintenance dredging" means dredging an area previously dredged under a Board-issued or Department-issued license for the purpose of maintaining the area's functional navigation channel, marina, or mooring basin.*

(13) *"Mean high water" means the average of all the high water levels observed over the national tidal datum epoch.*

(14) *"Mean high water line" means the line where the land meets the water surface at the elevation of mean high water.*

(15) *"Mean low water" means the average of all the low water levels observed over the national tidal datum epoch.*

(16) *"Mitigation" means offsetting loss or damage to State tidal wetlands due to licensed activity by creating new State tidal wetlands or restoring or enhancing existing State tidal wetlands.*

(a) *"In-kind" means having characteristics closely approximating the original characteristics, including those of a vegetated tidal wetland before that wetland was adversely impacted.*

(b) *"Out-of-kind" means having characteristics not closely approximating those of a tidal wetland before that wetland was adversely impacted.*

(17) *Nonstructural Shoreline Stabilization Measure.*

(a) *"Nonstructural shoreline stabilization measure" means an erosion control measure that is dominated by tidal wetland vegetation, such as submerged aquatic vegetation, and is designed to preserve the natural shoreline, minimize erosion, and establish aquatic habitat.*

(b) *"Nonstructural shoreline stabilization measure" includes a living shoreline.*

(18) *Nonwater-Dependent Project.*

(a) *"Nonwater-dependent project" means a temporary or permanent structure or activity that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private tidal wetlands.*

(b) *"Nonwater-dependent project" includes a:*

(i) *Dwelling unit on a pier;*

(ii) *Restaurant, shop, office, or other commercial building or use on a pier;*

(iii) *Temporary or permanent roof or covering on a pier;*

(iv) *Pier used to support a nonwater-dependent use; and*

(v) *Small-scale renewable energy system on a pier, including a solar energy system and its photovoltaic cells, solar panels, or other necessary equipment; a geothermal energy system and its geothermal heat exchanger or other necessary equipment; and a wind energy system and its wind turbine, tower, base, or other necessary equipment.*

(c) *"Nonwater-dependent project" does not include:*

(i) *A fuel pump or other fuel-dispensing equipment on a pier;*

(ii) *A sanitary sewage pump or other wastewater removal equipment on a pier;*

(iii) *A pump, pipe, or any other equipment attached to a pier and associated with a shellfish nursery operation under a permit issued by the Department of Natural Resources under Natural Resource Article, §4-11A-23, Annotated Code of Maryland; or*

(iv) *An office for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.*

(19) *"Over, on, in, or under" means the horizontal and vertical totality of State tidal wetlands and the associated air space applicable throughout this chapter, except when the context clearly limits the meaning.*

(20) *"Periodic maintenance dredging" means maintenance dredging where:*

(a) *The area and depth of the dredging are in conformance with the original dredging license;*

(b) *No more than 500 cubic yards of material are dredged at each maintenance dredging to restore licensed work;*

(c) *The dredged material is deposited upon the designated dredge material placement site or other upland site approved by the Department; and*

(d) *The licensee receives prior approval from the Department for each maintenance dredging operation.*

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

(22) "Political subdivision" means a county (including Baltimore City) or municipality.

(23) "Private tidal wetlands" means:

(a) Land not considered State tidal wetlands bordering on or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth;

(b) Tidal wetlands transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred; or

(c) Tidal waters created by the excavation of upland unless conveyed to the State.

(24) Restoration.

(a) "Restoration" means reestablishment of tidal wetlands on former tidal wetland sites by manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions.

(b) "Restoration" results in rebuilding a former wetland and in a gain in wetland acres.

(25) "Riparian rights" means a bundle of rights that derive from the physical relationship of a body of water to the land abutting it.

(26) Riprap.

(a) "Riprap" means intentionally placed rock or other durable materials such as rubble or pre-formed concrete shapes, used to armor both shorelines, channels, and other natural features as well as pilings and other structures, against scour, and water or ice erosion.

(b) "Riprap" includes structures that may be constructed of riprap, such as revetments, embankments, groins, sills, and breakwaters.

(27) State Tidal Wetlands.

(a) "State tidal wetlands" means any land:

(i) Under the navigable waters of the State below the mean high water line, affected by the regular rise and fall of the tide; and

(ii) Between the landward boundary, coterminous with the mean high water line, and the seaward boundary, 3 miles from the low water mark of the Atlantic coast.

(b) "State tidal wetlands" does not include wetlands that have been transferred by the State by valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, which are instead "private tidal wetlands" to the extent of the interest transferred.

(28) "Structure" means something that is built or constructed, temporarily or permanently, including a boathouse, breakwater, bulkhead, drainage ditch, groin, pier, revetment, sill, tidal impoundment dike, transmission facility, or water control structure.

(29) "Trenchless technology" means subsurface construction work, including horizontal directional drilling, microtunneling, and other similar technologies, used to install underground infrastructure, such as below-ground pipelines and cables.

(30) "Upland" means any area that does not qualify as a tidal or nontidal wetland.

.04 License Requirement.

A. A person may not conduct the following activities over, on, in, or under State tidal wetlands without a license except as provided for in §E of this regulation:

(1) Dredging;

(2) Filling;

(3) Constructing, reconstructing, repairing, or altering structures, trestles, conduits, cables, pipelines, intake or discharge pipes, or similar devices or apparatuses;

(4) Constructing a shore erosion control project, including a living shoreline; or

(5) Otherwise altering State tidal wetlands.

B. The Board may issue a State tidal wetlands license to:

(1) The owner of the riparian rights associated with an upland parcel;

(2) The State, any unit of the State, or the federal government;

(3) A political subdivision;

(4) A public service company; or

(5) An individual who seeks to obtain soil borings, sediment borings, or samples for research purposes.

C. Agents.

(1) Any person eligible to apply for a license under §B of this regulation may do so through the use of an agent.

(2) Any reference to "applicant" or "licensee" in this chapter includes an agent of the eligible person.

D. The issuance of a State tidal wetlands license does not relieve the licensee from obtaining other approvals and permits that may be required, including a U.S. Army Corps of Engineers permit, water quality certification, coastal zone consistency certification, buffer management plan, and other State and local approvals and permits.

E. Activities Not Requiring a License. A person may conduct the following activities over, on, in, or under State tidal wetlands without a license issued by the Board:

(1) Constructing, repairing, or removing private noncommercial piers when the property owner provides 10-day notice to the Department on a Department-approved form and meets the following criteria:

(a) Only one pier per property;

- (b) Pier is not wider than 6 feet;
- (c) Piers over vegetated tidal wetlands are at least 3 feet above the wetlands;
- (d) Fixed or floating platforms, including Ts, Ls, and step-down platforms that:
 - (i) Do not exceed 200 square feet, excluding the segment of the main pier section to which the platform is attached;
 - (ii) Are not located over vegetated tidal wetlands or submerged aquatic vegetation; and
 - (iii) Are located in at least 2 feet at mean low water;
- (e) No more than two 3-foot wide finger piers may be constructed on the landward side of the end of a private pier;
 - (f) Pier does not extend within 100 feet of a Department-approved water-ski course;
 - (g) Pier does not extend beyond the lesser of 100 feet channelward of the mean high water line or a distance of 25 percent of the waterway width;
 - (h) Meets property line setback requirements established by the political subdivision;
 - (i) Pier does not impede navigation or block adjoining properties from ingress and egress;
 - (j) Pier does not obstruct the tidal flow;
 - (k) Pier does not include more than four slips, lifts, or hoists; and
 - (l) Pier does not extend within 500 feet of an approved aquaculture lease site.
- (2) Maintaining, repairing, or replacing an existing functional structure by a licensed marine contractor or property owner when there is only a de minimis increase in the original length, width, height, or channelward encroachment.
- (3) Dredging seafood products by a licensed aquaculture operator, harvesting submerged aquatic vegetation if the root system is not affected, and harvesting of seaweed.
- (4) Trapping, hunting, fishing, cultivating or harvesting shellfish when legally permitted.
- (5) Aquaculture activities occurring under a Department of Natural Resources lease.
- (6) Mosquito control and abatement projects approved by the Department of Agriculture.
- (7) Improving wildlife habitat or agricultural drainage ditches if approved by the appropriate State agency.
- (8) Marking channels and harbors and establishing navigation aids approved by the U.S. Coast Guard and the Department of Natural Resources.
- (9) Controlling invasive plant species through the application of pesticides when authorized by a toxic materials permit under COMAR 26.08.03.02.
- (10) Installing bass spawning boxes outside of marked navigation channels.

.05 Delegation to the Department.

A. The Board delegates to the Department the authority to grant, deny, or grant with conditions a State tidal wetlands general license for the following activities:

- (1) Except for applications for nonwater-dependent projects under Environment Article, §16-104, Annotated Code of Maryland, constructing pilings or fixed or floating private, noncommercial piers and platforms that are not exempt from licensure under Regulation .04E(1) of this chapter;
- (2) Constructing a revetment by placing riprap for shore erosion control only when it is no more than:
 - (a) 500 feet in length parallel to the shoreline; and
 - (b) 10 feet channelward of the mean high water line;
- (3) Filling or constructing a nonriprap shore erosion control structure, such as a bulkhead, when the fill area is no more than:
 - (a) 300 feet in length parallel to the shoreline; and,
 - (b) 10 feet channelward of the mean high water line;
- (4) Constructing tidal groins to minimize impacts to the littoral drift, when extending no more than 25 feet channelward of the mean high water line;
- (5) Bulkhead repair or replacement where the repair or replacement does not extend more than 18 inches channelward of the existing bulkhead. A general license for repair or replacement may authorize riprap placed as a revetment along the base of the bulkhead, if the riprap does not extend more than 10' channelward of the bulkhead;
- (6) Filling of nearshore shallow water not more than 35 feet channelward of the mean high water line when the fill area is:
 - (a) Less than 500 feet in length;
 - (b) Parallel to the shoreline; and
 - (c) For the purpose of shore erosion control by vegetated tidal wetland creation;
- (7) Maintenance dredging a mooring, private or commercial boat ramp, mobile boat hoist slip, or marine railway when no more than 100 cubic yards of material nor an area greater than 1,500 square feet needs to be dredged;
- (8) Reconfiguring an existing marina when there is no dredging or increase in channelward encroachment beyond existing piers and associated structures;
- (9) Constructing a private noncommercial boat ramp not more than 12 feet wide and 30 feet channelward of the mean high water line;

(10) Reinforcing bridges or causeways when they extend less than 10 feet from the existing structure, require no dredging, and do not impede the flow of the waterway;

(11) Creating a new discharge of stormwater runoff when the project directly discharges to tidal waters if the drainage system extends no more than 10 feet channelward of the mean high water line and complies with stormwater regulations;

(12) Clearing debris and windfalls from shorelines without dredging State tidal wetlands;

(13) Installing temporary (not to exceed 3 years) sampling, surveying, or monitoring equipment solely for research or educational purposes where the impacted area does not exceed 10,000 square feet;

(14) Performing scientific sampling, soil borings, sediment borings, archaeological surveys, or similar activities in a total area not to exceed 10,000 square feet or exceed 10 cubic yards;

(15) Installing temporary site access measures such as wooden mats, as long as there are no changes to hydrology or grading and the impacted area does not exceed 10,000 square feet and provided the area is restored to original conditions; and

(16) Installing intake and discharge structures associated with aquaculture activities that are not exempt from licensure under Regulation .04E(5) of this chapter.

B. The Department may not grant or deny a State tidal wetlands general license for a nonwater-dependent project under Regulation .07 of this chapter.

C. The Department may not grant or deny a State tidal wetlands general license if the activity listed in subsection A of this regulation requires compensation under Regulation .12 of this chapter or if the activity listed in §A of this regulation is part of a larger project that requires an individual license under Regulation .06B(4) of this chapter.

D. The Board, through the Executive Secretary, may, after consultation with the Wetlands Administrator, require any project delegated to the Department to obtain an individual license.

E. The Department shall provide to the Board such reports and information as the Board may request.

.06 Types of Licenses.

A. General License.

(1) A general license is an authorization for the activities identified in Regulation .05A of this chapter involving State tidal wetlands.

(2) To obtain a general license, a person shall apply to the Department in accordance with the procedures in COMAR 26.24.02.04.

(3) The Department:

(a) Shall, within 45 days of receipt of an application, notify the applicant whether the application is complete and the wetland delineation is correct; and

(b) May extend, upon written notice to the applicant, the deadline if the following extenuating circumstances prevent consideration of the application:

(i) Inclement weather conditions;

(ii) Review is required by federal, State, or local government agencies; or

(iii) The applicant requests extension.

(4) The Department:

(a) Shall grant, deny, or condition the general license within 45 days of receiving a complete application; and

(b) May extend, upon written notice to the applicant, the deadline 30 days for the following extenuating circumstances:

(i) Review is required by federal, State, or local government agencies; or

(ii) The applicant requests extension.

B. Individual License.

(1) An individual license is issued by the Board for activities involving State tidal wetlands that:

(a) Are not among those listed in Regulation .04E of this chapter;

(b) Are not delegated to the Department under Regulation .05A of this chapter; and

(c) Do not qualify for an emergency license under §C of this regulation.

(2) To obtain an individual license, a person shall apply through the Department in accordance with the procedures in COMAR 26.24.02.02 and §A(4)(b) of this regulation.

(3) An individual license is subject to public notice and an opportunity to request a public informational hearing in accordance with COMAR 26.24.01.04 and .05.

(4) If any aspect of a project requires an individual license from the Board, the entire project shall come before the Board, including those activities that are delegated under Regulation .05A of this chapter.

C. Emergency License.

(1) Without prior public notice, the Administrator may issue an emergency license when an emergency exists caused by an act of God, natural disaster, catastrophe, or other similar natural event when the health, safety, or welfare of the citizens of the State would be jeopardized by a delay caused by time requirements for public notice.

(2) An emergency license issued under §A of this regulation, including its effective period, is limited to only those activities necessary to abate or mitigate the emergency.

(3) Any additional activities beyond those necessary to abate or mitigate the emergency require either a general or individual license under §A or B of this regulation.

(4) To obtain an emergency license a person shall apply through the Department. The initial request may be made orally. The applicant shall provide the following written information to the Department within 3 days:

- (a) Applicant's name;
- (b) Location of the emergency activity;
- (c) Site photographs;
- (d) Extent of work to be done;
- (e) Anticipated impact on tidal wetlands; and
- (f) Nature of the emergency.

(5) Promptly upon receipt of the written information, the Department shall notify the Department of Natural Resources and the Maryland Historical Trust.

(6) If the Department determines an emergency license is appropriate, the Department shall issue a written summary to the Administrator within 10 days of the initial request containing:

- (a) A description of the emergency;
- (b) Terms and conditions under which the emergency license should be granted;
- (c) Comments received from the Department of Natural Resources and the Maryland Historical Trust; and
- (d) Any other submitted comments or relevant materials.

(7) Within 14 days of the initial call, the applicant shall submit an application to the Department.

(8) Emergency License Issuance.

(a) If the Administrator agrees with the Department's determination that an emergency license is appropriate, then:

- (i) The Board authorizes the Administrator to issue an emergency license; and
- (ii) The Administrator shall issue the emergency license within 14 days of the initial request.

(b) The Administrator shall transmit the license to the applicant and advise the applicant to sign and return the license to the Administrator, constituting acceptance of the terms and conditions.

(c) If an applicant fails to sign and return the emergency license within 14 calendar days of transmittal, the Administrator shall notify the applicant in writing that the license is void.

(d) Upon return of the signed emergency license, the Administrator shall sign and transmit a copy of the fully signed license to the licensee and to the Department.

(e) The license is effective when fully signed under both §C(8)(b) and (d) of this regulation.

(9) After issuance of the emergency license:

(a) The Department shall provide prompt public notice and an opportunity to submit written comments and to request a public informational hearing on ratifying or revoking the license;

(b) If a public informational hearing is requested, it shall occur within 30 days of issuance of the emergency license;

(c) Within 30 days after the public comment period ends, the Department shall send to the Administrator in writing:

- (i) A summary of comments received;
- (ii) A summary of the public informational hearing, if held;
- (iii) The Department's response to concerns raised in the comments or at the public informational hearing;

and

(iv) The Department's recommendation to ratify, modify, suspend, or revoke the emergency license; and

(d) After receipt of the Department's written recommendation under §C(9)(c) of this regulation, the Administrator shall submit an Action Agenda item to the Board with the Administrator's recommendation that the Board ratify, modify, suspend, or revoke the emergency license.

.07 Nonwater-Dependent Projects on a Pier.

A. This regulation does not apply to nonwater-dependent projects located on State tidal wetlands in Prince George's County.

B. The Board may issue an individual license authorizing a nonwater-dependent project on a pier if:

(1) The project is on a pier constructed on or after January 1, 2013, and meets the following criteria:

(a) Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;

(b) The pier is not attached to residential, institutional, or industrial property;

(c) Avoids and minimizes impacts to State tidal wetlands and other aquatic resources;

(d) Is located in either:

(i) An intensely developed area, where the project is authorized under the local jurisdiction's Critical Area program by a program amendment on or after July 1, 2013; or

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

(e) Is approved by the local planning and zoning authority;

- (f) Allows or enhances public access to State tidal wetlands;
- (g) Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;
- (h) Has a height of up to 18 feet unless the project is located at a marina and the Secretary recommends additional height;
- (i) Is up to 1,000 square feet in total area;
- (j) Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, a leased aquaculture site, or an area with rare, threatened, or endangered species or species in need of conservation; and
- (k) Does not adversely impact a fish spawning or nursery area or a historic waterfowl staging and concentration area;
- (2) The project is on a pier in existence on or before December 31, 2012, and meets the following criteria:
 - (a) Satisfies all of the requirements under §B(1)(a)—(i) of this regulation; and
 - (b) If the project has a temporary or permanent roof or covering, it can be no more than 1,000 square feet in total area; or
 - (3) The project is for a small-scale renewable energy system and meets the following criteria:
 - (a) Involves installing or placing a small-scale renewable energy system that is permitted as a secondary or accessory use;
 - (b) Avoids and minimizes impacts to State tidal wetlands and other aquatic resources;
 - (c) Is located in either:
 - (i) The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under the local jurisdiction's Critical Area program or by a program amendment on or after July 1, 2013; or
 - (ii) An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (d) Is approved by the local planning and zoning authority;
 - (e) Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, a leased aquaculture site, or an area with rare, threatened, or endangered species or species in need of conservation; and
 - (f) Does not adversely impact a fish spawning or nursery area or a historic waterfowl staging and concentration area.

C. A license issued under §B(3) of this regulation may include installing or placing a:

- (1) Solar energy system attached to a pier if the device or equipment associated with that system does not extend more than:
 - (a) 4 feet above or 18 inches below the deck of the pier; or
 - (b) 1 foot beyond the length or width of the pier;
- (2) Solar energy system attached to a piling if there is only one solar panel per boat slip;
- (3) Solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;
- (4) Closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:
 - (a) Extend beyond the length, width, or channel ward encroachment of the pier;
 - (b) Deleteriously alter long shore drift; or
 - (c) Cause significant individual or cumulative thermal impacts to aquatic resources; or
- (5) Wind energy system attached to a pier if there is only one wind energy system per pier for which:
 - (a) The height from the deck of the pier to the blade extended at its highest point is 12 feet or less;
 - (b) The rotor diameter of the wind turbine is 4 feet or less; and
 - (c) The setbacks of the wind energy system from the nearest property line and from the channel ward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

D. Existing Nonwater-Dependent Projects on a Pier.

- (1) A nonwater-dependent project on a pier, where the project was in existence on or before June 30, 1989, may continue to be used.
- (2) A nonwater-dependent project added to a pier on or after July 1, 1989, may continue to be used if it was added in compliance with a wetlands license issued under the law applicable at the time.
- (3) The Board may issue an individual license authorizing an alteration or expansion of an existing nonwater-dependent project on a pier if the final project complies with the requirements of §B of this regulation.

.08 Department's Report and Recommendation.

A. The Department shall submit a written Report and Recommendation for each application for an individual license to the Administrator that includes the following:

- (1) Name and complete contact information for the applicant, and its agent, if any;
- (2) Location of the project including the name of the impacted waterbody;

- (3) Whether the license should be granted;
 - (4) Any conditions under which the license should be granted;
 - (5) Information compiled during site visits, if any;
 - (6) Whether a public informational hearing was required, when it was held, a summary of the public informational hearing, and copies of any documents submitted to the Department;
 - (7) A statement where applicable, that the Department has coordinated review of the application with the Department of Natural Resources, the Maryland Historical Trust, and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;
 - (8) Comments submitted by the public or State, federal, or local agencies;
 - (9) List of interested persons;
 - (10) For trenchless technology projects:
 - (a) Design plans and justification for the bore depth; and
 - (b) If the trenchless technology project involves a bore greater than 12 inches in diameter, the design plans shall be signed, sealed and dated by a professional engineer licensed in the State of Maryland under Business Occupations and Professions Article, §14-301, Annotated Code of Maryland, who prepared or approved the design plans;
 - (11) For any recommendation to authorize improvements to protect a person's property against erosion using any measures other than a nonstructural shoreline stabilization measure, such as a living shoreline, an explanation of why the Department granted a waiver under Environment Article, §16-201(c), Annotated Code of Maryland; and
 - (12) For projects that propose removal of submerged aquatic vegetation, an explanation as to why impacts to that vegetation cannot be avoided.
- B. If the Department has suspended processing an application under COMAR 26.24.02.02H, it shall notify the Board, and, upon request from the Board through its Administrator, cease that suspension and complete its report.

.09 Board Action on Applications for Individual Licenses.

A. The Board shall grant or conditionally grant, or deny, an individual license upon determining if issuance of the license is:

- (1) Sufficient to the attainment of riparian rights; and
- (2) Reasonable in accordance with the best interests of the State.

B. In making its determination, the Board shall:

(1) Consider the recommendations of the Department, the report of the Board's Administrator, any public testimony at an informational hearing, any documents submitted, and any other relevant information in the record, including any additional oral testimony the Board may elect to hear; and

(2) Take into account:

- (a) The varying ecological, economic, developmental, recreational, and aesthetic values that the project presents; and
- (b) The State's public policy to preserve the wetlands and prevent their despoliation and destruction.

C. Review of Application.

(1) The Board, through its Administrator, may request the Department to supplement its Report and Recommendation to address specific concerns relevant to determining either the sufficiency of the proposed project or the best interests of the State.

(2) For any application with interested persons who expressed opposition to the proposed license either in writing to the Department or the Board, or at the public informational hearing, the Board, through its Administrator, shall:

(a) Publish the Department's Report and Recommendation, including any supplement, on the Board's website, and

(b) Provide notice of that publication to any interested persons.

(3) Interested persons may submit written comments to the Board after publication of the Department's Report and Recommendation on the Board's website under §C(2)(a) of this regulation.

(4) The Administrator shall:

- (a) Review the Department's Report and Recommendation, including any supplement;
- (b) Review any comments received within 21 days after publication under §C(3) of this regulation, and may review comments received thereafter;
- (c) Submit a written recommendation to Board members stating whether an individual license should be granted, and specifying any appropriate terms and conditions;
- (d) Before the Board's action on an individual license, inform the applicant in writing of the following:
 - (i) Any monetary compensation in lieu of mitigation recommended under Regulation .11 of this chapter; and
 - (ii) Any compensation recommended under Regulation .12 of this chapter; and
- (e) Make available to Board members all records and documents reviewed and considered in preparing the recommendation submitted under §C(4)(c) of this regulation .

.10 Terms and Conditions.

- A. All conditions take effect upon license issuance, unless specifically stated otherwise.*
- B. Standard Conditions.*
- (1) A State tidal wetlands license shall carry standard conditions.*
 - (2) The Board shall approve a template for licenses, including standard terms and conditions, and publish the template on its website.*
 - (3) The Department and the Administrator may recommend to the Board revisions to the license template.*
- C. Special Conditions.*
- (1) The Department or the Administrator may recommend to the Board special conditions, or other amendments to the license template, for inclusion in a specific State tidal wetlands license.*
 - (2) Examples of issues that may warrant special conditions include:*
 - (a) Marina facility;*
 - (b) Trenchless technology;*
 - (c) Maintenance dredging; and*
 - (d) Cultural resources.*
 - (3) Examples of special conditions include:*
 - (a) Mitigation in accordance with Regulation .11 of this chapter;*
 - (b) Compensation in accordance with Regulation .12 of this chapter;*
 - (c) Water Quality Certification in compliance with COMAR 26.24.04;*
 - (d) Soil Erosion and Sediment Control plans as required and approved by the Department, applicable soil conservation district, or other approving authority; and*
 - (e) Time of year restrictions requiring that a licensed structure be constructed or activity be performed only during certain time periods to assure protection of fish spawning and nursery habitat, shellfish habitat, submerged aquatic vegetation, or historic waterfowl staging and concentration areas, or to avoid public recreational conflicts.*

.11 Mitigation.

- A. The Department or the Administrator may recommend:*
- (1) Mitigation designed to replace the values and functions associated with the wetlands to be impacted as set forth in this regulation and COMAR 26.24.05.01; or*
 - (2) When mitigation is not feasible, monetary compensation in lieu of mitigation.*
- B. To make the recommendation under §A of this regulation, the Department or the Administrator shall follow the process in COMAR 26.24, including multiplying the acreage of the lost or adversely impacted State tidal wetlands using the following ratios:*

<i>Restoration or In-Kind Creation</i>	
<i>Open water tidal wetlands</i>	<i>1:1</i>
<i>Emergent tidal wetlands</i>	<i>2:1</i>
<i>Scrub-shrub tidal wetlands</i>	<i>2:1</i>
<i>Forested tidal wetlands</i>	<i>2:1</i>
<i>Tidal wetland habitat for rare, threatened, or endangered species, or species in need of conservation</i>	<i>3:1</i>
<i>Submerged aquatic vegetation and natural oyster bars</i>	<i>3:1</i>
<i>Enhancement or Out-of-Kind Creation</i>	
<i>Open water tidal wetlands</i>	<i>2:1</i>
<i>Emergent tidal wetlands</i>	<i>4:1</i>
<i>Scrub-shrub tidal wetlands</i>	<i>4:1</i>
<i>Forested tidal wetlands</i>	<i>4:1</i>
<i>Tidal wetlands habitat for rare, threatened, or endangered species, or species in need of conservation</i>	<i>6:1</i>
<i>Submerged aquatic vegetation and natural oyster bars</i>	<i>6:1</i>

- C. If a licensed structure or activity will cause an unavoidable adverse environmental impact or loss of State tidal wetlands, the Board may require:*
- (1) Mitigation by conditioning the license on restoring, creating in-kind new tidal wetlands, creating out-of-kind new tidal wetlands, or enhancing existing tidal wetlands, or a combination; or*
 - (2) Monetary compensation in lieu of mitigation in an amount the Board determines appropriate.*
- D. Compensation in lieu of mitigation received under this §C(2) of this regulation is deposited into the Tidal Wetlands Compensation Fund.*

.12 Compensation.

- A. Except for any license issued to a governmental unit, the Board may require as a license condition that the licensee pay compensation to the State in an amount the Board deems appropriate for the following activities:*
- (1) Filling to make upland;*
 - (2) Dredging or severance of material unrelated to navigational need; or*
 - (3) Similar nonriparian use.*

B. Except for any license issued to a governmental unit, the Board shall require as a license condition that the licensee pay compensation to the State in an amount deemed appropriate by the Board for the following:

- (1) Cables, pipelines, or other structures over, on, in, or under State tidal wetlands; and*
- (2) Nonwater-dependent projects.*

C. Compensation for Filling to Make Upland.

(1) When the Board requires compensation for filling to make upland, the licensee shall pay a one-time amount equivalent to the fair market value of the upland created or other amount specified by the Board.

(2) The Administrator shall:

(a) Determine the fair market value of the upland created based on the higher of two appraisals obtained by the licensee, after consulting with the Department of General Services; and

(b) Make a recommendation to the Board on the compensation amount.

D. Compensation for Dredging or Severance of Materials.

(1) The Board may not require compensation for dredging projects involving navigational purposes, beach nourishment, removal of bottom contaminants, or displacement of the bottom during archeological investigations.

(2) When the Board requires compensation for dredging or severance of materials from State tidal wetlands, the licensee shall pay an amount specified by the Board.

(3) The Administrator shall:

(a) Determine an amount based on:

(i) A nonrecurring, nonrefundable charge of \$1,000, and a minimum of \$250 or \$1.75 per cubic yard of dredged or severed material, whichever is greater; or

(ii) Any other rates specified by the Board; and

(b) Make a recommendation to the Board on the amount of compensation.

E. Compensation for Cables, Pipelines, or Other Structures.

(1) The Board shall require compensation for cables, pipelines, or other similar structures over, on, in, or under State tidal wetlands.

(2) The licensee shall pay:

(a) A nonrecurring, nonrefundable charge of \$1,000; and

(b) A minimum annual compensation rate of \$2.50 per linear foot or an amount specified by the Board.

(3) Each individual cable, pipeline, or similar structure is subject to the annual compensation requirement.

(4) The Administrator shall make a recommendation to the Board on the amount of the annual compensation by multiplying \$2.50 by each linear foot by each individual cable, pipeline, or other similar structure.

(5) Five years after issuing the license and every 5 years thereafter, the Board may adjust the per linear foot annual compensation rate to reflect changes in the Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics.

F. Annual Compensation for Nonwater-Dependent Projects on a Pier.

(1) Except for small-scale renewable energy system projects as authorized by Regulation .07B(3) of this chapter, the Board shall require annual compensation for:

(a) Nonwater-dependent projects; and

(b) Projects that materially alter or expand the footprint of an existing nonwater-dependent project.

(2) Calculation of Compensation.

(a) The Administrator shall make a recommendation to the Board on the annual compensation amount that is based on the most recent data provided by the State Department of Assessments and Taxation in the assessment record for the real property to which the nonwater-dependent project is attached.

(b) The annual compensation is computed by:

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

(ii) Multiplying the rate calculated under §F(2)(b)(i) of this regulation by a percentage considered appropriate by the Board not to exceed 100 percent.

$$\left[\text{Total sq. ft project area} \times \left[\frac{\text{Assessed Land Value entire parcel to which project is attached}}{\text{Total sq. ft entire parcel to which the project is attached}} \right] \right] \times \text{Board \%}$$

(c) In determining the appropriate percentage under §F(2)(b)(ii) of this regulation, the Board may consider:

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

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

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

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

(v) Any history of violation of the State Tidal Wetlands Law by the licensee;

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

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

G. Compensation received under this regulation is deposited into the Department's Wetlands and Waterways Program Fund.

.13 Individual License Issuance.

A. Upon the Board's favorable action, the Administrator shall:

(1) Prepare the individual license in accordance with the Board's action;

(2) Transmit the license to the applicant for signature; and

(3) Advise the applicant in writing to sign and return the license to the Administrator, indicating acceptance of the terms and conditions.

B. If an applicant fails within 90 days of transmittal to sign and return an individual license to the Administrator, the Administrator shall notify the applicant in writing that the license is void.

C. Upon receipt of the signed original license, the Administrator shall sign and promptly transmit a copy of the fully signed license to the licensee and the Department.

D. The license is effective when fully signed.

E. Once issued, the license may be modified, suspended, or revoked by the Board in accordance with Regulations .15, .16, and .18 of this chapter.

F. Except for dredging or maintenance dredging, a license authorizes continuing use or structural occupation on State lands and waters if all conditions of the license are met.

.14 License Expiration.

A. Duration.

(1) A general license issued by the Department expires after 3 years, unless extended under Regulation .15 of this chapter.

(2) An individual license expires after 3 years unless:

(a) The Board authorizes a longer initial period for an individual license; or

(b) The license is extended under Regulation .15 of this chapter.

(3) Licenses authorizing periodic maintenance dredging are valid for a maximum period of 6 years.

(4) An emergency license has a period not to exceed the amount of time necessary to abate or mitigate the emergency.

B. Expiration. When the license expires, the licensee:

(1) Shall stop any incomplete activities authorized under the license; and

(2) Except for dredging or maintenance dredging, may continue use or structural occupation on State lands and waters, if all conditions of the license are met.

.15 License Extension.

A. The Department may extend a general license if the licensed activity remains an activity listed in Regulation .05A of this chapter.

B. The Administrator may extend an individual or an emergency license upon receipt of the licensee's request under §E of this regulation and a favorable written recommendation by the Department, except for the following licenses:

(1) A license for maintenance dredging under Regulation .14A(3) of this chapter; or

(2) Individual licenses for which the Board granted a longer initial period under Regulation .14A(2)(a) of this chapter.

C. The Board may extend an individual license for which the Board granted a longer initial period under Regulation .14A(2)(a) of this chapter upon receipt of the licensee's request under §E of this regulation and a favorable written recommendation from the Administrator and the Department.

D. Extension Period.

(1) The Department may grant a one-time extension of a general license for a period up to 3 years.

(2) The Administrator may grant a one-time extension of an individual or emergency license for a period up to 3 years.

(3) Additional extensions, beyond the one-time, 3-year extension and extensions under §B of this regulation may be approved by the Board after a recommendation by the Administrator.

E. A licensee shall request an extension in writing to the Department stating the following:

(1) Reason the structure or activity could not be constructed or performed within the license period;

(2) Revised schedule for completion of the structure or activity; and

(3) Assurances that all other State, federal, and local approvals either have not expired or have been authorized or extended.

F. An expired license may not be extended but requires reapplication under Regulation .06 of this chapter.

G. If a written request for extension is received at least 2 weeks before a license expires, the license will continue to be valid until a final decision is issued by either the Administrator or the Board, whichever is applicable.

.16 License Modification.

A. A licensee or the Department may request in writing that the description of the authorized structure or activity or the conditions of an individual or emergency license be modified and shall state the reason for the request.

B. The Administrator may modify an individual or emergency license if the Department provides a favorable written recommendation and:

(1) The modification is minor; or

(2) The Department determines that the structure or activity or the license conditions require modification to correct adverse environmental impacts.

C. A minor modification means:

(1) A reduction in the scope of the originally authorized work;

(2) Revisions to the project plans or specifications that are nominal and would otherwise be approved, and conditions at the site have not changed since the previous review; or

(3) Waiving or modifying time of year restrictions after consultation with the Department of Natural Resources.

D. After consulting with the Department, the Administrator shall either:

(1) Grant the modification request by revising the original license; or

(2) Deny the modification request in writing, including the reason for the denial and the procedure for appealing the modification denial.

E. After consulting with the Department, the Administrator may:

(1) Recommend approval to the Board of a license modification not qualifying for consideration under §B of this regulation; or

(2) Require the modification to be submitted as a reapplication under Regulation .06 of this chapter.

F. A new license issued after reapplication and approval supersedes the original license.

.17 License Transfer.

A. The Administrator may transfer a license upon receipt of a written request, with supporting documentation, from the new riparian landowner, the licensee's successor in interest, or the new holder of the riparian rights.

B. The Administrator shall mail the new license to the licensee for signature.

C. Upon receipt of the signed license, the Administrator shall sign and promptly transmit a copy of the fully signed license to the licensee and the Department.

D. Terms and conditions of the transferred license remain the same as the original license.

.18 License Suspension or Revocation.

A. The Board or its designee may suspend or permanently revoke a license when the action is considered to be in the State's interest, after consulting with the Administrator and the Department.

B. Grounds for suspension or revocation include:

(1) Violation of:

(a) Environment Article, Title 16, Annotated Code of Maryland;

(b) COMAR 26.24; or

(c) This chapter;

(2) Failure of a licensee to comply with the requirements of an administrative action or order of the Department issued under COMAR 26.24 or 26.08.02, when appropriate;

(3) Failure of a licensee to pay compensation imposed in accordance with Regulation .12 of this chapter;

(4) Violation of the license;

(5) Misrepresentation in the application or failure to disclose a relevant and material fact;

(6) Substantial deviation from the plans, specifications, or terms and conditions of a license;

(7) Failure of the licensee to permit a representative of the Department to enter the site to make reasonable inspection at a reasonable hour; or

(8) Circumstances when the licensee's rights under a license have not vested and receipt of new information, changed site conditions, or amended regulatory requirements necessitate suspension or revocation.

.19 Appeals.

A. The Administrator shall promptly notify, by certified mail, the applicant and all other interested persons who provided written or oral comments to the Board of the Board's action to grant, deny, modify, suspend, or revoke a license.

B. Within 30 days after receiving the Board's decision, any person with standing may petition the circuit court in the county where the land is located.

C. A person has standing to file a petition under §B of this regulation if the person:

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

(2) Is the applicant or participated in the public process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

D. The Board shall compile the record that was before them and submit it to the circuit court where the petition was filed.

E. An appeal is a petition for judicial review and shall be conducted in accordance with Environment Article, Title 1, Subtitle 6, Annotated Code of Maryland, and is not a contested case hearing under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.