

Maryland State and Federal Permitting

Coastal Nature-Based
Solutions for Shoreline
Erosion Control in the
Chesapeake and Atlantic
Coastal Bays Critical Areas



Maryland Sea Grant College
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Written by Kai Hardy, J.D., and Elissa Torres-Soto, J.D., Maryland Sea Grant Law and Policy Fellows

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INTRODUCTION

This guide provides an overview of Maryland’s laws governing living shorelines, which provide crucial ecosystem services, including shoreline stabilization, flood control, nutrient filtration, and wildlife habitat. This document also includes a step-by-step guide for waterfront property users on how to apply for a license or permit with State and federal agencies to place a living shoreline on one’s property.



Buehl, E. (2020). Living Shoreline on the Chester River near Chestertown, Kent County, MD.

I. BACKGROUND INFORMATION

A. Chesapeake and Atlantic Coastal Bays Critical Areas

Authority: Critical Area Act Maryland Code Natural Resources Article § 8-1801-1817 (1984)

Regulations: **COMAR Title 27**

The Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area were established by state statute in 1984. The statute created a Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, and tasked it with, among other things, regulating the Critical Area program and administering and enforcing the Critical Area State and local programs.

Md. Code Ann., Nat. Res. § 8-1806.

1. What is the Critical Area?

The Critical Area refers to the Chesapeake Bay and the Atlantic Coastal Bays Critical Area, except areas excluded under statute. It includes the initial planning area of the Chesapeake Bay Critical Area (consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the **head of tide**, and all State and private wetlands designated under Title 16 of the Environmental Article) and the initial planning area of the Atlantic Coastal Bays Critical Area (consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide).

Head of tide: The inland or upstream limit of water affected by the tide.

The Critical Area also consists of all water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides except as excluded under the **Natural Resources Article Section 8-1807 (c)**.

2. What is a Critical Area Buffer?

The Buffer is a section of the Critical Area that:

- is immediately landward from (1) the mean high water of tidal waters, (2) the edge of each bank of a tributary stream, or (3) the landward boundary of a tidal wetland, based on conditions existing at the time of the development; and
- exists or may be established in natural vegetation to protect a (1) stream, (2) tidal wetland, (3) tidal waters, or (4) terrestrial environment from human disturbance.

The Buffer includes an area of at least 100 feet, even if that area was previously disturbed by human activity. However, on some properties, the Buffer may be expanded because of a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined by regulation [COMAR 27.01.01.01\(8\) \(a-b\)](#). Local planning offices can help property users determine the width or location of the Buffer on their property.

The Maryland Department of the Environment (MDE) regulates wetlands and waterways below the mean high water tide. Local governments with local Critical Area Commission oversight regulate the 100-foot Critical Area Buffer and expanded Buffer. The Buffer is measured from mean the high-water line or the landward edge of tidal wetlands, whichever is further landward.

a. General Restrictions of the Buffer:

- Generally, construction and land disturbance, such as clearing trees, cutting brush or grading are prohibited.
- A local jurisdiction may not authorize disturbance in the Buffer unless it is:
 - a. Approved under a local variance; and
 - b. Associated with a water-dependent activity or facility such as a boat ramp, or it provides access to water in accordance with a shoreline stabilization measure under [COMAR 27.01.04](#).
- The project must be in accordance with a Buffer Management Plan approved by the local government. Replanting is typically required for the removal of vegetation, with certain exceptions for dead trees and invasive species.
- If the Buffer is already forested, it should be maintained in natural vegetation. Native plant species shall be used to enhance wildlife habitat.

b. Buffer Forms

Applicants for shoreline stabilization projects in the Critical Area Buffer that alter the Buffer must include a draft Buffer Management Plan and a signed Buffer Notification Form in the Joint Federal/State permit application (JPA).

- **Buffer Notification Form:** Located on the [Critical Area Commission website](#). The form gives the permit applicant and owner of the land and project (if not the same) notice of Critical Area Buffer requirements. The form must be signed and included in the JPA submitted to MDE.
- **Buffer Management Plan:** A narrative along with a draft sketch that shows the Critical Area Buffer, proposed impacts, and required mitigation are necessary when the applicant proposes a shore erosion control project that will impact the Critical Area Buffer. The term 'Buffer Management Plan' for shoreline erosion control projects refers to a completed draft sketch as noted above accompanied by a completed form as described below.
- Local government approval of a Buffer Management Plan ensures that the Buffer's functions are maintained or enhanced following installation of a shoreline protection measure. Buffer disturbance without a Buffer Management Plan approved by the county government or Buffer disturbance that is not consistent with an approved Buffer Management Plan is a violation of state and local laws. A draft Buffer Management Plan and a signed Buffer Notification Form are required components of the JPA submission to MDE.

c. *Types of Draft Buffer Management Plan Forms for Shore Erosion Control Projects*

Off-Shore Work Only Form: May only be used for projects conducted offshore or by barge and if no impacts to the Buffer will occur. Project types that fit this form would include offshore breakwaters, marsh edging, the placement of stone in front of an existing bulkhead or to protect an existing unvegetated bank. This form may not be used if the project involves stockpiling or accessing the shoreline via land or grading, clearing, or disturbance to the Buffer.

Bulkheads Replacement Form: Mitigation is required for the removal of trees and shrubs. Local governments may require mitigation for limits of disturbance in the buffer as well. A Buffer Notification Form is required.

Revetment Form: Provides a step-by-step process for creating a Buffer Management Plan for revetments. Mitigation is required at a 1:1 ratio for the limits of permanent disturbance, and an additional 1:1 mitigation ratio is required for the square footage of tree canopy coverage removed. A filter strip made up of native warm season grasses, herbaceous, and shrubs may be installed as mitigation for any Buffer impacts. A Buffer Notification Form is required.

Living Shoreline Form: Provides a step-by-step process for creating a Buffer Management Plan for living shorelines. If this form is used, flexibility is provided in the amount and type of mitigation required. If impacts are kept within a 15-foot width as measured parallel from the landward edge of the mean high water or a tidal wetland, then 1:1 mitigation is only required for tree canopy clearing. A Buffer Notification Form is required.

Buffer management plan templates available at: <https://dnr.maryland.gov/criticalarea/Pages/sec.aspx>

B. Shoreline Erosion Control Projects

Living Shoreline Protection Act 2008 Maryland Laws Ch. 304 (H.B. 973); Md. Code Ann., Nat. Res. § 8-1808.11(a).

The Act mandates the use of wetland creation and habitat enhancement projects where technologically and ecologically appropriate when doing a shoreline stabilization control project. The Act includes the presumption that every site can support a **nonstructural shoreline stabilization technique**. If the applicant desires to use **structural shoreline stabilization measures**, he or she must demonstrate that the use of structural measures is necessary to protect the property from erosion and that nonstructural measures are infeasible. In determining feasibility, the following factors are considered:

1. Whether the area is subject to excessive erosion;
2. Whether the area is subject to heavy tides; and
3. Whether the area is too narrow for effective use of nonstructural stabilization measures.

Living shoreline waiver: Applicants can apply for a waiver of the Living Shoreline Protection Act requirement when nonstructural shoreline control measures are not feasible on all sites because of excessive erosion, heavy tides, or the size and configuration of a particular waterway.

A waiver is an exemption granted by MDE from the requirement mandating a non-structural shoreline stabilization measure. **COMAR 26.24.04.01-2.**

The waiver application needs to be included in the Joint Federal/State application.

Nonstructural shoreline stabilization measure means an erosion control measure, including living shorelines, that is dominated by tidal wetland vegetation and is designated to preserve the natural shoreline, minimize erosion, and establish aquatic habitat.

COMAR 26.24.01.02. (B) (35-1) (a) (b).

Structural shoreline stabilization measure means an erosion control measure that uses devices to armor and stabilize an area landward of the measure from future erosion. It includes the use of a bulkhead, gabion, revetment, groin or groyne, breakwater, jetty, sand, beach nourishment, or any other similar structure, or any other device for erosion control or vessel protection.

COMAR 26.24.01.02. (B) (53) (a-b).

HELPFUL LINKS

Critical Area Buffer: <https://dnr.maryland.gov/criticalarea/Pages/buffer.aspx>

Buffer Management Plans: https://dnr.maryland.gov/criticalarea/Documents/sec/BMPlan_MarineContractors.pdf

Shore Erosion Control: <https://dnr.maryland.gov/criticalarea/Pages/sec.aspx>

Living Shorelines: <https://dnr.maryland.gov/ccs/Pages/livingshorelines.aspx>

Critical Area FAQs: <https://dnr.maryland.gov/criticalarea/pages/faqs.aspx#20>

Bay Smart: A Citizen's Guide to Maryland's Critical Area Program: <https://dnr.maryland.gov/criticalarea/pages/bay-smart-guide.aspx>

New Tidal Wetland Regulations for Living Shorelines: <https://mde.state.md.us/programs/water/WetlandsandWaterways/Pages/LivingShorelines.aspx>

Living Shoreline Waiver Request: <https://mde.state.md.us/programs/Water/WetlandsandWaterways/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Living%20Shoreline%20Waiver%20Request%20Form%20with%20Samples.pdf>

II. JOINT FEDERAL/STATE PERMIT APPLICATION

A. What is the Joint Federal/State Permit Application?

The Joint Federal/State Permit Application (JPA) is a single permit application that seeks two authorizations: one from MDE under **COMAR 26.24**, and one from the U.S. Army Corps of Engineers (Army Corps) under CWA Section 404 and Section 10 of the Rivers and Harbors Act for any proposed activity that would impact regulated wetlands.

Federal Authority: Environment Article Title 16 Annotated Code of Maryland (MD. CODE ANN., ENV'T § 16), Section 404 of the Clean Water Act (CWA) (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899. (33 U.S.C. §§401 and 403).

State Regulations: Tidal Wetland Licenses and Permits **COMAR 26.24**.

Pre-application meetings with MDE's Wetlands and Waterways Program and the Army Corps' Regulatory Branch are not required but strongly encouraged. These meetings help expedite the permitting process and address any issues that may arise early in the permitting process. The prospective applicant should bring all available project information to the meeting. To request a pre-application meeting, fill out the request form (<http://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/PreApplicationIntroduction.aspx>) and submit it by email to the address specified on the form.

B. Steps for Application Submission

- 1) Locate the Joint Federal/State Permit Application
 - a. The abbreviated JPA form ("Short Form") can only be submitted by applicants whose projects qualify for the Maryland State Pragmatic General Permit (MDSPGP): https://mde.state.md.us/programs/Water/WetlandsandWaterways/PermitsandApplications/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/J_PA_SF_Bundle.pdf (application instructions and forms).
 - b. Applications for projects that do not qualify for the MDSPGP authorization must use the "Long Form" JPA: <https://mpa.maryland.gov/greenport/Documents/4.%20JOINT%20FEDERAL%20STATE%20APPLICATION.pdf>
 - c. Application fees: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/Fee-Schedule-July2017.pdf>

- 2) Mail original and 6 copies of the application and any supporting documentation to MDE's Regulatory and Customer Services (RCS) Division. The RCS receives applications for MDE's Non-Tidal Wetlands Division, Tidal Wetlands Division, Waterway Construction Division, and the Dam Safety Division of the MDE as well as the Army Corps.
- 3) MDE will communicate with the applicant within a 45-day period after receiving the application if additional information is required in the application. If MDE fails to notify the applicant within the 45-day period, the application is considered complete for State review. MDE may request additional information from the applicant as part of the administrative review process. **COMAR 26.24.02.02.**
- 4) MDE conducts the application review in cooperation with local, state, and federal agencies.
- 5) Although MDE often coordinates with local governments on specific applications, it is the applicant's responsibility to obtain all local approvals for the project.
- 6) After the submission of the final construction plans, a permit or license is issued by MDE (General License/Permit or Wetlands Permit), or in some instances, a Wetland's License may be issued by the Maryland Board of Public Works based on the recommendation from MDE.

C. Projects That Qualify for a General Wetlands License/Permit

Projects that qualify for approval under a General Wetlands License/Permit include projects to:

- a. Add stone or broken concrete to a revetment or bulkhead if the stone or broken concrete extends not more than 10 feet channelward of the existing structure;
- b. Place 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;
- c. Fill nearshore 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;
- d. 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;**
- e. Reconfigure an existing marina if there is no dredging or no increase in channelward encroachment beyond existing piers and associated structures;
- f. Construct a boat ramp not more than 12 feet wide and 30 feet channelward of the mean high water line;
- g. 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;
- h. Create a new discharge of stormwater 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 includes measures:
 - Designed to control erosive velocities to tidal waters; and
 - Required under **COMAR 27.01.01** and **27.02.01** and a State-approved critical area program of a local jurisdiction;
- i. Clear debris and windfalls from shorelines without dredging State tidal wetlands;
- j. Install temporary monitoring or research devices; or
- k. Construct a replacement bulkhead within a maximum of 18 inches channelward of a functional bulkhead.



Koontz, E. (2023). A living shoreline grows along a waterfront beach in Maryland.

1. General Wetlands License (COMAR 26.24.02.04)

Projects eligible for a General Wetlands License typically involve a relatively minimal disturbance to waterways. General Wetlands Licenses have a faster approval timeline (approx. 90 days) than Wetlands Licenses (approx. 240-325 days).

General Wetlands Licenses are issued for qualifying projects on State-owned tidal wetlands. MDE reviews the JPA and considers the ecological, economic, developmental, recreational, and aesthetic values of the proposed project and determines if the proposed project qualifies under the General Wetlands License. Projects that qualify for the General Wetlands License are listed in **COMAR 26.24.02.04 (B) (1-11)** (see Part C above).

For the authorization under the General Wetlands License to be valid, **the applicant shall obtain all required permits or local approvals before beginning work on a licensed activity**, obtain an approved sediment and erosion control plan from the local soil conservation district before construction when applicable, notify the Enforcement Division of the Water Management Administration at least 5 days before beginning work, allow MDE representatives to enter the property at reasonable times to inspect the ongoing work or completed work under a license, and design and construct the authorized work in a manner that minimizes adverse impacts on natural resources values, including water quality, plants, wildlife, and plant and wildlife habitat.

The authorization under the General Wetlands License expires 3 years after the date of issuance. If the licensees are not done with the project within the 3 years, they need to apply for a new license. License extensions are not granted.

2. General Wetlands Permit

Projects eligible for a General Wetlands Permit typically involve a relatively minimal disturbance to waterways. General Wetlands Permits have a faster approval timeline (approx. 90 days) than Wetlands Permits (approx. 240-325 days).

General Wetlands Permits are issued for qualifying projects occurring in privately owned tidal wetlands. MDE reviews the JPA and considers the ecological, economic, developmental, recreational, and aesthetic values of the proposed project and determines if the proposed project qualifies under the General Wetlands Permit. If the project qualifies for the General Wetlands Permit, MDE shall issue the authorization directly to the applicant. Projects that qualify for approval under the General Wetlands Permit are projects that are listed in **COMAR 26.24.02.04 (B) (1-11)** and **COMAR 26.24.02.05 (B) (1-3)**.

For the authorization under the General Wetlands Permit to be valid, **the applicant shall obtain all required permits or local approvals before beginning work on a licensed activity**, obtain an approved sediment and erosion control plan from the local soil conservation district before construction when applicable, notify the Enforcement Division of the Water Management Administration at least 5 days before beginning work, allow MDE representatives to enter the property at reasonable times to inspect the ongoing work or completed work under a permit, and design and construct the authorized work in a manner that minimizes adverse impacts on natural resources values, including water quality, plants, wildlife, and plant and wildlife habitat.

The authorization under the General Wetlands Permit expires 3 years after the date of issuance. If the permittees are not done with the project within the 3 years, they need to apply for a new permit. Extensions are not granted by the department.

COMAR 26.24.02.05.

D. Projects That Do Not Qualify for a General Wetlands License/Permit

Includes projects that are not listed in [COMAR 26.24.02.04 \(B\) \(1-11\)](#) or [COMAR 26.24.02.05 \(B\) \(1-3\)](#).

1. Wetlands License

Projects requiring a Wetlands License typically involve a greater disturbance to waterways. Wetlands Licenses have a longer approval timeline (approx. 240-325 days) than General Wetlands Licenses (approx. 90 days).

A Wetlands License is a written authorization by the Board of Public Works to dredge, fill, construct a structure, or conduct any other activity involving State-owned tidal wetlands that does not qualify for approval under a General Wetlands License. [COMAR 26.24.01.02 \(62-2\)](#).

After the submission of a Joint Federal/State permit application, MDE reviews the application and the supporting documents submitted by the applicant to determine if the proposed project is consistent with State, federal, and local land use requirements, including federal tidal wetlands authorizations under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, critical area, zoning, special exception, variance, or conditional use approvals.

State, local, and federal agencies will work with MDE to evaluate the compliance with statutory and regulatory requirements. The applicant shall allow MDE to conduct an inspection of the project site. After its evaluation, MDE issues its recommendation to the Board of Public Works, which votes on the approval of the Wetlands License. [COMAR 26.24.02](#)

2. Wetlands Permit

Projects requiring a Wetlands Permit typically involve a greater disturbance to waterways. Wetlands Permits have a longer approval timeline (approx. 240-325 days) than General Wetlands Permits (approx. 90 days).

A Wetlands Permit is a written authorization by MDE 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. [COMAR 26.24.01.02 \(62-3\)](#).

After the submission of a JPA, MDE reviews the application and the supporting documents submitted by the applicant to determine if it is consistent with State, federal, and local land use requirements, including federal tidal wetlands authorizations under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, critical area, zoning, special exception, variance, or conditional use approvals.

State, local, and federal agencies will work with MDE to evaluate the proposed project's compliance with statutory and regulatory requirements. The applicant shall allow MDE to conduct an inspection of the project site. After its evaluation, MDE issues the written decision concerning the approval of the Wetlands Permit. The decision regarding the approval, denial, suspension, or modification of a Wetlands Permit will be based on MDE's consideration of the ecological, economic, developmental, recreational, and aesthetic values of tidal wetlands to preserve them and prevent their degradation and loss. [COMAR 26.24.02](#)

Evaluation Criteria for a Wetlands License or Permit can be found at [COMAR 26.24.02.02 \(1-19\)](#).



Koontz, E. (2023). A segmented sill living shoreline site on Kent Island, MD.

E. Public Notice COMAR 26.24.01.04

Generally, projects that require approval under the Wetlands License or Permit require public notice. At the time of the submission of the application, the applicant shall notify adjoining riparian property owners in writing. This 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 MDE within two weeks of receipt.

Prior to the approval of the Wetlands License or Permit, MDE shall issue a public notice inviting members of the public to submit comments or request a public informational hearing about the application for a Wetlands License or Permit.

F. Appeals COMAR 26.24.02.08

1. General License and Wetlands License

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.

2. General Permit and Wetlands Permit

An applicant who is adversely affected by a decision of denial, suspension, revocation, or condition of a permit by MDE may, within 30 days of receipt of the administrative action, file with the Director of the Water Management Administration ("Director") written exceptions and a request to present oral argument. After considering the written exceptions, the Director may hear the argument and will issue a written final decision. 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. 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.

G. Resources

- **Tidal Wetlands Permits, Licenses and Certifications information:**
https://mde.maryland.gov/programs/water/WetlandsandWaterways/PermitsandApplications/Pages/tidal_permits.aspx
- **Wetlands and Waterways Program FAQs:**
<https://mde.state.md.us/programs/Water/WetlandsandWaterways/Pages/faqs.aspx>
- **Pre-Application/Pre-Filing Meetings:**
<https://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/PreApplicationIntroduction.aspx>
- **Wetlands and Waterways Program Application Fee Schedule and Guidelines:**
<https://mde.state.md.us/programs/Water/WetlandsandWaterways/Documents/Fee-Schedule- July2017.pdf>
- **Proposed Living Shoreline Supplemental Checklist:**
<https://mde.maryland.gov/programs/water/WetlandsandWaterways/PermitsandApplications/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/Supplemental%20Living%20Shoreline%20Checklist.pdf>

III. U.S. ARMY CORPS OF ENGINEERS REGULATORY APPROVAL PROCESS

The U.S. Army Corps of Engineers ("Corps") regulates all waters of the United States (WOTUS) as defined in Section 404 of the Clean Water Act, as amended in 2023. Living shorelines impacting WOTUS in Maryland may be authorized by the Army Corps under one of three permit "vehicles," including the Maryland State Programmatic General Permit – 6 (MDSPGP-6), Nationwide Permit #54 (NWP 54), or a Standard Individual Permit.

A. Maryland State Programmatic General Permit-6 (MDSPGP-6)

[MDSPGP-6](#) is a general permit issued by the Baltimore District of the U.S. Army Corps of Engineers ("Corps") pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899. (33 U.S.C. §§

401 and 403). MDSPGP-6 applies to the discharge of dredge or fill material and/or the placement of structures into waters of the U.S. as regulated by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

Activities authorized by MDSPGP-6 must be components of a single and complete project, including attendant features both temporary and permanent, which individually and cumulatively result in no more than **minimal adverse environmental impacts**. Activities authorized under MDSPGP-6 require compliance with general conditions and activity-specific impact thresholds and descriptions set out in the permit.

In reviewing the application materials for the proposed activity, the Corps will determine whether the activity authorized by MDSPGP-6 will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to public interest. Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland losses that exceed 5,000 square feet and stream losses that exceed 200 linear feet and which require an application submission for Corps authorization, unless the Corps determines in writing that either (1) some other form of mitigation would be more appropriate, or (2) the adverse effects of the proposed activity are minimal and provides a project-specific waiver of this requirement.

If the proposed activity requires an application submission for Corps authorization and will result in a loss greater than 5,000 square feet of wetlands and/or 200 linear feet of stream channel, the project applicant is responsible for submitting an appropriate compensatory mitigation proposal with the application, unless a project-specific waiver is granted.

For wetland losses of 5,000 square feet and stream losses of 200 feet or less that require an application for submission for Corps authorization, the Corps may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

1. MDSPGP-6 Review Categories

Category A: To be eligible for authorization under Category A, activities must meet the Category A activity-specific impact limits and conditions located in Section IV.A of the MDSPGP-6 permit and the general conditions of MDSPGP-6. Permit applications are reviewed by MDE according to the MDSPGP-6 procedures. If MDE determines that the project qualifies as Category A, MDE will attach verification of the applicability of MDSPGP-6 to the State authorization. Certain MDSPGP-6 Category A activities may require public notice under State regulations. In this case, MDE will place the project on public notice and the Corps may provide comments or invoke discretionary authority to require an alternate Corps permit review because of concerns for the aquatic environment or for any other public interest factor.

Category B: Applications for projects identified by MDE as Category B activities will be sent to the Corps for review. The Corps will coordinate with federal and state resource agencies to determine eligibility for authorization under MDSPGP-6.

The Corps will provide coordination notices to the resource agencies (Environmental Protection Agency (EPA), the U.S. Coast Guard (USCG), the National Marine Fisheries Service -Office of Habitat Conservation (NMFS-OHC), NMFS-Protected Resource Division (NMFS-PRD), the U.S. Fish and Wildlife Service (USFWS), Maryland Historical Trust (MHT), MDE, and DNR), if appropriate. These notices assign a **15-day review** to comment and provide recommendations within their area of expertise on the appropriateness of the authorization of the proposed project under MDSPGP-6. These agencies may request an extension of the 15-day comment period. The Corps will coordinate with Tribal Nations in accordance with the Baltimore District's Tribal coordination processes.

If a Category B project could adversely affect Essential Fish Habitat (EFH), the Corps will provide NMFS a **30-day coordination notice**, including EFH assessment and project plans. NMFS will provide EFH conservation recommendations as comments to this coordination notice to the Corps with a copy to MDE. NMFS conservation recommendations will generally be included as a MDSPGP-6 permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-6 process, the applicant will be notified in writing that an alternate Corps permit review is required. The Corps will fully consider agency comments received by the proposed activity's compliance with the terms and conditions of MDSPGP-6, including the need for compensatory mitigation to ensure that the net-adverse environmental effects of the proposed activity are no more than minimal. After review, the Corps will determine if the project can be authorized under MDSPGP-6; whether specific modifications or conditions are necessary to qualify for authorization (e.g., submission of a mitigation plan); or whether the project is ineligible for Corps review under MDSPGP-6 and an alternate review is required. When the Corps has made its determination, it will notify MDE and the applicant.

B. Alternative Corps Review

NOTE: "Alternative" Corps review is a term used in coordination between MDE and the Corps, but is not a specific permit type. Alternative permits may be issued if the applicant's living shoreline project does not meet the criteria for an MDSPGP-6 permit. There are two types of alternative permits applicable to living shorelines that a project could be granted: (1) a "Standard Individual Permit" or a (2) "Nationwide 54." Nationwide 54 ([NWP 54](#)) is more similar to the MDSPGP in process. Notably, [Maryland has regional conditions to NWP 54](#). Standard Individual Permits require the Corps to provide public notice and conduct an Environmental Analysis (pursuant to the National Environmental Policy Act) for each project.

Activities that require Corps review but are ineligible under the terms and conditions of MDSPGP-6 may be eligible for NWP 54 or a Standard Individual Permit, and a completed Federal/State Joint Permit Application must be submitted to MDE Regulatory Services Coordination Office for Corps evaluation under the alternate Corps permit review procedure. All information submitted by the applicant for MDSPGP-6 review will be used to initiate review by the Corps for the alternate permit. Additional information may be requested to complete the review. Individual Water Quality Certification and Coastal Zone Certification from the state are required where applicable.

The Federal resource agencies (USFWS, EPA, or NMFS) may object to authorizing a proposed project under the MDSPGP-6 and request a specific project be evaluated under Individual Permit procedures within the 15-day agency notification (or 30-day EFH review and comment period for NMFS). The Corps will consider any comments from the Federal agencies concerning the proposed activity's compliance with the terms and conditions of MDSPGP-6 and the need for avoidance and minimization to reduce the project's adverse environmental effects to a minimal level. If the Corps agrees that an individual permit review of the projects is appropriate, the Corps will notify MDE and the applicant.

The Corps retains discretionary authority on a case-by-case basis to require a Corps Standard Individual Permit review for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority may be invoked for projects with cumulative environmental impacts that may be more than minimal, or if there is a special resource or concern associated with a particular project.

NOTE: The Impact thresholds for Categories A and B activities are defined for each activity in the MDSPGP-6 Section IV.A.

IV. WATER QUALITY CERTIFICATION

Section 401 of the Clean Water Act requires federal agencies to obtain certification from the State that the proposed discharge complies with the State's water quality standards and requirements before issuing a federal permit or license to conduct an activity (e.g., construction of a living shoreline) that may result in a discharge to navigable water.

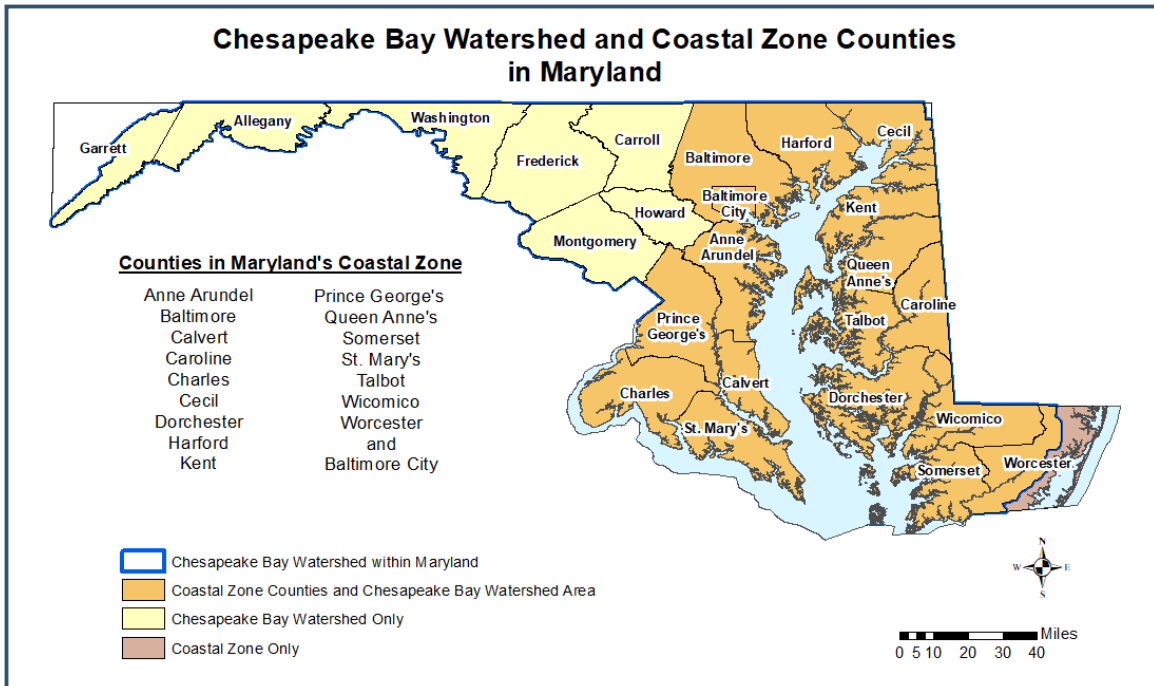
Both [MDSPGP-6](#) and [NWP 54](#) have received Section 401 certifications from the Maryland Department of the Environment. However, if the applicant's living shoreline project does not qualify for MDSPGP-6 or NWP 54, the Corps must obtain a separate water quality certification before approving the applicant's project. For more information on water quality certification, as applied to Maryland, visit MDE's website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/WQC.aspx>

V. COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION

Under the Coastal Zone Management Act, federal actions, license/permit activities, and financial assistance activities that have reasonably foreseeable coastal effects must be consistent with the enforceable policies of State coastal management programs approved by the National Oceanic and Atmospheric Administration. Federal "Consistency Review" is the process by which a state decides whether a federal action meets the State's enforceable policies.

The Maryland Coastal Zone Management Program (CZMP) is a partnership among local, regional, and State agencies. Although the CZMP is administered by the Maryland Department of Natural Resources, no one State agency is solely responsible for implementing the Program.

Both MDSPGP-6 and NWP 54 have "blanket" CZMP certifications covering all activities verified under them. Therefore, there is no need for a separate Federal Consistency Review for living shoreline projects that qualify for those permits. However, if the project does not qualify for a MDSPGP-6 or NWP 54, an applicant must fulfill the Consistency Review requirements. For more information on Federal Consistency Review, as applied to Maryland, visit MDE's website: <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/CZM.aspx>



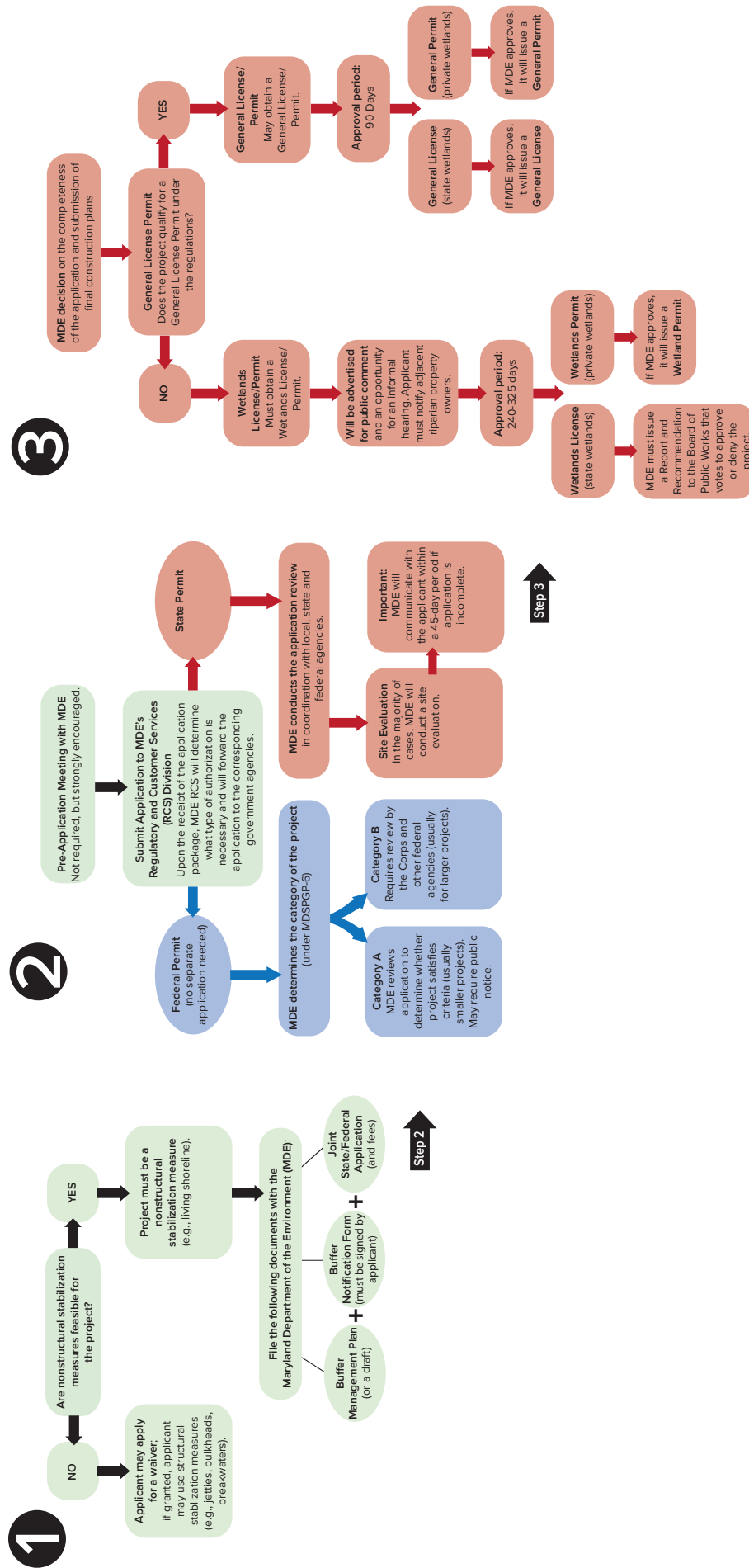
*Map of Chesapeake Bay Watershed and Coastal Zone Counties in Maryland,
Maryland Department of the Environment*

Resources:

Guide to Federal Permitting in Maryland: <https://www.nab.usace.army.mil/Missions/Regulatory/Permits-MD/>

Living Shoreline Permitting Process in Maryland

For shoreline erosion control projects, the Living Shoreline Protection Act requires “nonstructural stabilization measure” (e.g., living shorelines) unless they are infeasible.





Koontz, E. (2023). View of a gap between the riprap segments at a segmented sill living shoreline in Dorchester County, MD.