



February 15, 2023

The Honorable Brian J. Feldman
Senate Education, Energy, and the Environment Committee
Miller Senate Building, 2 West
Annapolis, Maryland 21401

Re: Senate Bill 417 – Environment – State Wetlands – Shoreline Restoration

Dear Chairman Feldman and Members of the Committee:

The Maryland Department of the Environment (MDE or Department) has reviewed Senate Bill 417 and would like to share some information. MDE met with the Chesapeake Bay Foundation and have committed to working on this issue over the interim.

MDE understands the intention of this legislation as we share similar concerns regarding issuance of waivers from living shoreline requirements. As such, MDE is currently studying this issue and making improvements to the waiver process. MDE has been evaluating the success of implementing the Living Shorelines Act in Maryland over the last several years by evaluating data compiled by staff, field studies of living shoreline success, creation of an interagency workgroup, and acquiring U.S. Environmental Protection Agency (EPA) grants to improve living shoreline suitability maps- Maryland Structural Stabilization Mapper (MSSM). MDE has made significant progress in refining its living shoreline waiver process based on the aforementioned actions, most notably through the continued development of the MSSM tool, and a coordinated interagency review process. MDE expects the result of these actions to be an observed downward trend in living shoreline waiver issuance.

MDE would like to share comments on the bill as drafted and, should the bill move forward, suggestions for clarifications and amendments. These comments are itemized and summarized as follows: 1) Intended Outcomes and Key Terms Undefined; 2) Maintain Existing Waiver Process; 3) Grant Fund Establishment; and 4) Expand Grant Fund Use.

1. Intended Outcomes and Key Terms Undefined: The 2008 Living Shore Act recognized the use of nonstructural shoreline measures to protect against sea level rise and other effects of anthropogenic climate change. Nonetheless, SB 417 as written presents significant challenges for effective implementation of the Act due to a lack of clarity on the overall intent of the bill and its requirements. SB 417 would require that improvements made to protect a person’s property against erosion are designed to increase the “resilience of the land” and to increase the “habitat connectivity of the land and water” and require that improvements made to protect against erosion consist of nonstructural practices that “‘improve the quality’ of the natural environment, such as marsh creation” (unless exempted), and “incorporate the use of living features, including marsh grasses, submerged aquatic vegetation, and native oysters.” Shoreline erosion control measures employ a wide range of practices based upon the site conditions, energy environment, aquatic habitat, etc. As this language shifts the focus of shoreline protection to benefitting the land’s resilience, it is not clear which types of practices should be favored when considering hard or soft options given their appropriate application in a specific environment that serves the purpose of increasing the resilience of the land or habitat

connectivity. Living shoreline designs vary and are constantly evolving as new techniques are developed, and the addition of overly specific design criteria in legislation would present many challenges for practitioners, and may lead to unsuccessful designs and liability concerns. The Department would recommend the addition of language clarifying the intended design criteria to avoid inconsistency in implementation by the Department and uncertainty for the regulated community.

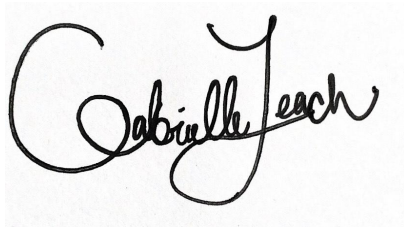
2. Maintain Existing Waiver Process: SB 417 would eliminate the statutory exceptions under § 16-201(c)(1) and restrict the Department's ability to issue nonstructural shoreline waivers codified in COMAR 26.24.04.01-2, limiting it to two narrow instances. By eliminating the waiver consideration process living shorelines may be mandated in less suitable locations. Damage to infrastructure (including transportation and utilities) and assets which cannot not be adequately protected could result in additional repair and replacement costs. The bill's requirement that an undefined "structure" be present on the property and also under an immediate threat of damage introduces a new consideration into the current process. For example, if a property is outside of the mapped area but does not have a structure at imminent risk, the Department may not issue a waiver, despite any opposing technical or scientific merits. Currently the ability to protect land from shoreline erosion is afforded to any riparian property owner- including unimproved waterfront properties. The process proposed in SB 417 to identify areas suitable for nonstructural practices is also inconsistent with the federal regulatory process which may lead to delays in permitting and unpredictability for the regulated community. The Department recommends maintaining existing flexibility in the waiver process and the multiple outcomes available in the current mapping tool.
3. Grant Fund Establishment: The Department's Wetlands and Waterways Protection Program (WWPP), which is responsible for the Tidal Wetlands Compensation Fund, does not administer grants, and does not have staffing capabilities to oversee the management of a separate Coastal Resilience and Living Shoreline Restoration Account ("Account") and an associated grant funding program. Other entities including Maryland DNR's Chesapeake & Coastal Service (MDNR) and the Chesapeake Bay Trust currently facilitate grant programs & provide other assistance to waterfront property owners at no cost. Further, the Maryland Coastal Atlas mapper and tool (which houses an existing framework that may potentially be utilized for shoreline prioritization) is managed by MDNR. A grant program that requires establishment of priority shoreline restoration zones and funds for replacement of structural shoreline stabilization measures with nonstructural shoreline stabilization measures may be more efficiently implemented via one of these existing grant-making organizations.
4. Expand Grant Fund Use: The Department supports the development of a grant program to provide much-needed resources for living shoreline installation in Maryland as we frequently hear from the regulated community that lack of funds impedes our shared living shoreline goals, and would fully support legislation to provide these resources without changes to the living shoreline criteria or the waiver process as SB 417 proposes. The Department encourages that any grant program created via this legislation funds living shorelines on all priority properties instead of only replacement of existing structures.

As stated previously, it is the Department's preference to work on this issue over the interim with all interested parties. Thank you for considering the Department's information regarding this legislation. We will continue to monitor SB 417 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-453-3235 or by e-mail at Gabrielle.Leach@maryland.gov.

The Honorable Brian J. Feldman

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Sincerely,

A handwritten signature in black ink that reads "Gabrielle Leach". The signature is written in a cursive style with a large, prominent initial "G".

Gabrielle Leach
Deputy Director
Legislative and Intergovernmental Affairs

cc: The Honorable Sarah Elfreth