

3-3-22 HB1313 Ltr. of Support to Committee (M.M.C.)

Uploaded by: Brandon Weems

Position: FAV

*"Protecting & Promoting the Marine
Construction Industry Through Unity
& Leadership."*



8626 Brooks Drive, Unit 103
Easton, Maryland 21601
www.mdmarinecontractors.org
410-822-0510

March 3, 2022

Maryland House of Delegates
Environment & Transportation Committee
Room 251
House Office Building
Annapolis, Maryland 21401

Re: HB1313 - *Environment – Exception to Nonstructural Shoreline Stabilization Requirements*

Dear Committee Chair Barve & Committee Members:

The Maryland Marine Contractors Association (M.M.C.A.) supports HB1313.

The M.M.C.A., established in 2008, is a tireless advocate for the protection and promotion of the marine construction industry in Maryland. It was our organization that championed the marine contractor licensure legislation back in 2010 with the goal of raising the professional bar within the industry and establishing a mutually beneficial working relationship with Federal, State, and Local regulators.

As it is now, the waiver process for an exemption from the living shoreline mandate, is heavily weighted in favor of disqualifying bulkheads, riprap, and other traditional stabilization measures - so much so that the recommendation of a licensed marine contractor is not even part of the scoring criteria. No two shorelines share identical attributes, which adds a layer of complexity that can't be adequately assessed on a waiver grading worksheet. Based on financial risk alone, but still within the framework of best management practices and regulatory guidance, marine contractors should be the final arbitrator when it comes to what stabilization methods to employ in any one given situation. HB1313 rightfully gives weight to the expert opinions of marine contractors who are best positioned to answer the question of 'what works' and 'what doesn't work' when it comes to shoreline stabilization. This practical hands-on experience adds value and meaning to any regulatory discussion. Reputable marine contractors, and M.M.C.A. members in particular, understand the importance of sound science-based environmental policy and regulations because our livelihoods depend on the Bay and her tributaries being healthy and vibrant. Protecting our waterways from sedimentation and nutrient run-off, all while safeguarding public and private investments in waterfront lands, is an essential service. Recognition of the importance of our trade should come in the way of 1) a permanent seat at the stakeholder table on all tidal wetland policy discussions, and 2) specific to HB1313, an influential voice in shoreline stabilization project development.

Thank you in advance for your consideration of our favorable testimony on HB1313 and if you have any questions, please do not hesitate to contact us.

Sincerely,

Maryland Marine Contractors Association, Inc.

Brandon S. Weems
M.M.C.A. President

BSW/bmw

MMCA HB 1313 - T. Allen.pdf

Uploaded by: Brandon Weems

Position: FAV



T. Allen Marine Construction

3/5/2022

Re: HB 1313

Dear Committee Chair Barve & Committee Members,

T. Allen Marine LLC and its staff is in agreement with HB 1313 and its goals for lifting the heavy burden and sever liability off Maryland Marine Contractors and home owner's in Maryland. The living shoreline waiver is heavily weighted to exclude century old methods for shoreline erosion control. T. Allen Marine builds living shorelines and really do like the result, but it's a decision we make based on 20 years experience working on the Bay. Any efforts to assist us and our marginalized community would be greatly appreciated.

Sincerely

Todd Allen

Pile Driving • Boat Lift • Stone • Demolition • Dredging • Bulkhead

P.O. Box 387 • Stevensville, MD 21666 • Office (410) 643-5935 • Cell (410) 804-1495 • Fax (410) 643-5936 • www.tallenmarine.com

HB1313 Mautz Testimony.pdf

Uploaded by: Johnny Mautz

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 9, 2022

SPONSOR TESTIMONY
DELEGATE JOHNNY MAUTZ
DIST. 37B – CAROLINE, DORCHESTER, TALBOT & WICOMICO COUNTIES

HB 1313—ENVIRONMENT—EXCEPTION TO NONSTRUCTURAL SHORELINE STABILIZATION REQUIREMENTS

Summary

HB1313 would authorize licensed marine contractors to exempt certain landowners from the waiver process of the state’s living shoreline requirements.

Background

Erosion is a significant issue for many landowners and is a serious environmental concern.

In 2008, Maryland enacted the Living Shoreline Protection Act, which requires shoreline property owners to use natural solutions to prevent erosion. This law included a waiver process that has been implemented by regulation.

An MDE waiver worksheet is included for your review.

The waiver process has proven to be exceptionally difficult. HB1313 is a proposal to provide relief to landowners and contractors.

Living shorelines are exceptionally costly and as result, many landowners do not take necessary measures to prevent erosion.

Rationale

Marine contractors have the expertise to make case by case determinations and justifications as to whether or not natural solutions should be required.

Conclusion

If enacted, HB 1313 will enhance shoreline protection and maintain the spirit of our Living Shoreline requirements.

HB1313LivingShoreLineExhibit1.pdf

Uploaded by: Johnny Mautz

Position: FAV



Living Shoreline Waiver Request
Maryland Department of the Environment
Water Management Administration



INSTRUCTIONS

Shore erosion control projects must consist of nonstructural shoreline stabilization measures that preserve the natural environment (i.e. Living Shorelines or marsh creation) unless:

- A waiver is obtained from the Maryland Department of the Environment (MDE); or
- The project shoreline has been mapped by MDE as an area appropriate for structural shoreline stabilization measures (i.e., revetment, groin, bulkhead, etc.) These maps are available on [MDE's website](#).

In addition to the areas already mapped by MDE, certain sites will not be suitable for nonstructural shoreline stabilization measures due to site-specific characteristics. For example, at sites with excessive erosion, severe high energy conditions, extreme water depths, or a narrow waterway, a living shoreline may not be feasible and a property owner may be eligible for a waiver from the requirement to construct a nonstructural shoreline stabilization measure.

To determine if your site meets these criteria and is eligible for a waiver:

1. Complete this Waiver Request Form.
2. Mail photographs of the project site along with the completed Waiver Request Form to:

Maryland Department of the Environment
Tidal Wetlands Division
1800 Washington Blvd.
Baltimore, MD 21230
Attn: ([Name of County Planner if Known](#))
3. Complete a [Pre-Application Meeting Request Form](#) and submit the form by email or by mail with the completed Waiver Request Form and project site photographs to the above address.
4. After receiving all of the required information, MDE will contact the property owner or primary contact, if one is designated, to arrange a site visit. After the site visit, MDE will notify the property owner or primary contact, if one is designated, whether the Living Shoreline Waiver Request was approved.

Please be advised that for ALL shore erosion control projects, a property owner must obtain a State tidal wetlands authorization and all other applicable Federal, State, or local authorizations before beginning construction. A completed Living Shoreline Waiver Request Form is not authorization of your proposed project or authorization to begin work.

To obtain a State tidal wetlands authorization to construct a shore erosion control project, a property owner must complete the following documents and submit them to MDE:

- a) A [Joint Federal/State Application for the Alteration of any Tidal Wetland in Maryland](#);
- b) A proposed [Critical Area Buffer Management Plan](#);
- c) A [Critical Area Buffer Notification Form](#); and
- d) If applicable, a [Living Shoreline Waiver](#) approved by MDE.

LIVING SHORELINE WAIVER WORKSHEET

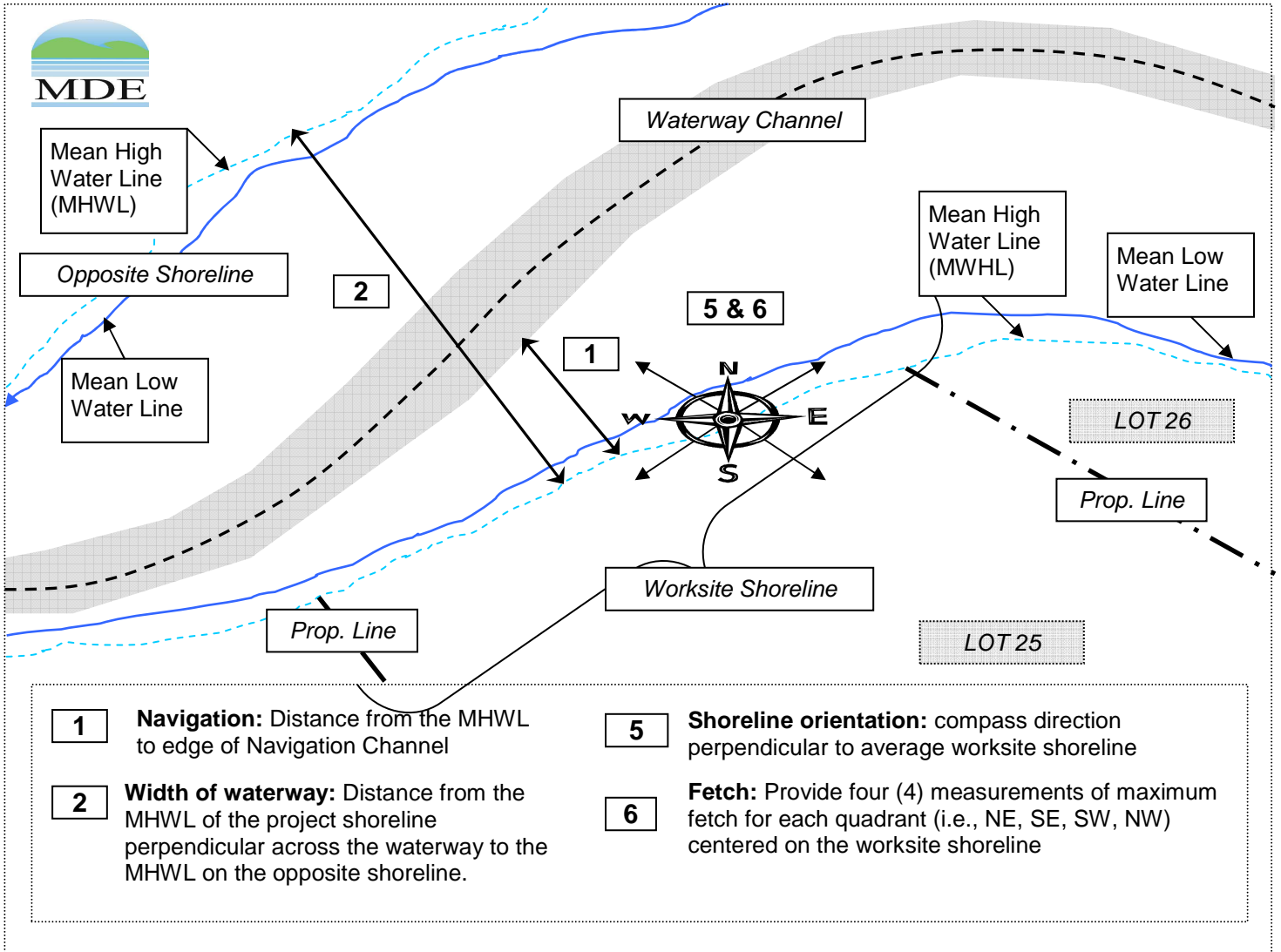
Project Site Address: _____				
City, State, Zip: _____				
1	Navigation	Distance from the Mean High Water Line to the center line of the closest mapped or unmapped channel		
2	Width of Waterway	Distance from the Mean High Water Line of the project Shoreline perpendicular across the waterway to the Mean High Water Line on the opposite shoreline.		
3	Depth at Toe of Bank	Depth of the water measured from the elevation of the Mean Low Water Line to the bottom at the shoreline bank.		
4	Depth of Waterway	Depth of the water relative to Mean Low Water at 20 feet and 40 feet channelward of the <b style="color: red;">Mean High Water Line	<u>At 20 ft</u>	<u>At 40 ft</u>
5	Fetch	Unobstructed distance over open water, within each compass quadrant from the project site (i.e., NE, SE, SW, NW)	<u>NW</u>	<u>NE</u>
			<u>SW</u>	<u>SE</u>
6	Shoreline Orientation	A. Compass direction perpendicular to the project shoreline. Direction can be given as N, S, etc. or as a compass heading (i.e., 45°, 225°, etc.)		
		B. Is bank grading or tree trimming required to provide at least six hours of daily sunlight?		
7	Bottom Material	A. Indicate the firmness of the bottom material in the project area.	<input type="checkbox"/> Hard	<input type="checkbox"/> Soft
		B. Indicate the type of bottom material in the project area.	<input type="checkbox"/> Muck <input type="checkbox"/> Sand	<input type="checkbox"/> Silt <input type="checkbox"/> Clay
8	Sensitive Species	Will the project construction adversely impact fish, plant, underwater vegetation, marsh, shellfish, wildlife habitat, or the area within 100 feet landward of the project shoreline. -- If yes, provide explanation and attach to this form. -- If unknown, leave this section blank.		
9	Site Access	A. Can the project be constructed from the waterside of the project site?		
		B. Does site access require any grading or vegetation trimming?		
10	Mapped Shoreline	Is the project site mapped by MDE as an area appropriate for structural shoreline stabilization measures? If unknown, leave this section blank.		

I certify that the information on this form is true and accurate to the best of my knowledge and belief.

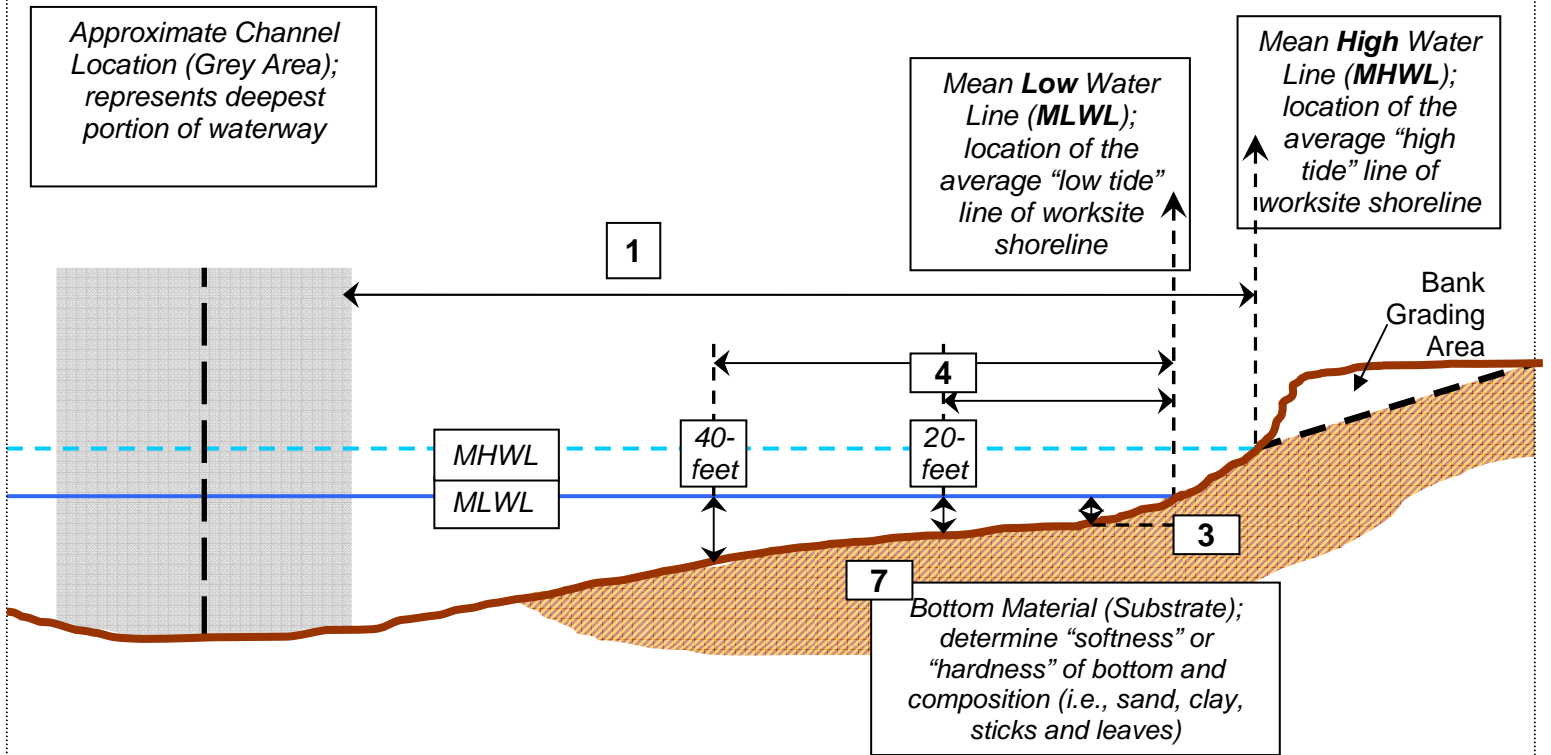
Property Owner Signature: _____ Date: _____

Property Owner Name (print): _____

MDE LIVING SHORELINE WAIVER REQUEST SAMPLE 1, PLAN VIEW



MDE LIVING SHORELINE WAIVER REQUEST SAMPLE 2 (CROSS SECTION)



MHWL Mean High Water Line
MLWL Mean Low Water Line; referenced to **0.0 ft.**

1 **Navigation:** Distance from the MHWL to edge of Navigation Channel

3 Depth of Water at toe or bottom of bank

4 Depth of water during low tide at approximately 20-foot channelward of the MLWL and at approximately 40-foot channelward of the MLWL

7 Bottom Material (Substrate); determine "softness" or "hardness" of bottom and composition (i.e., sand, clay, sticks and leaves)

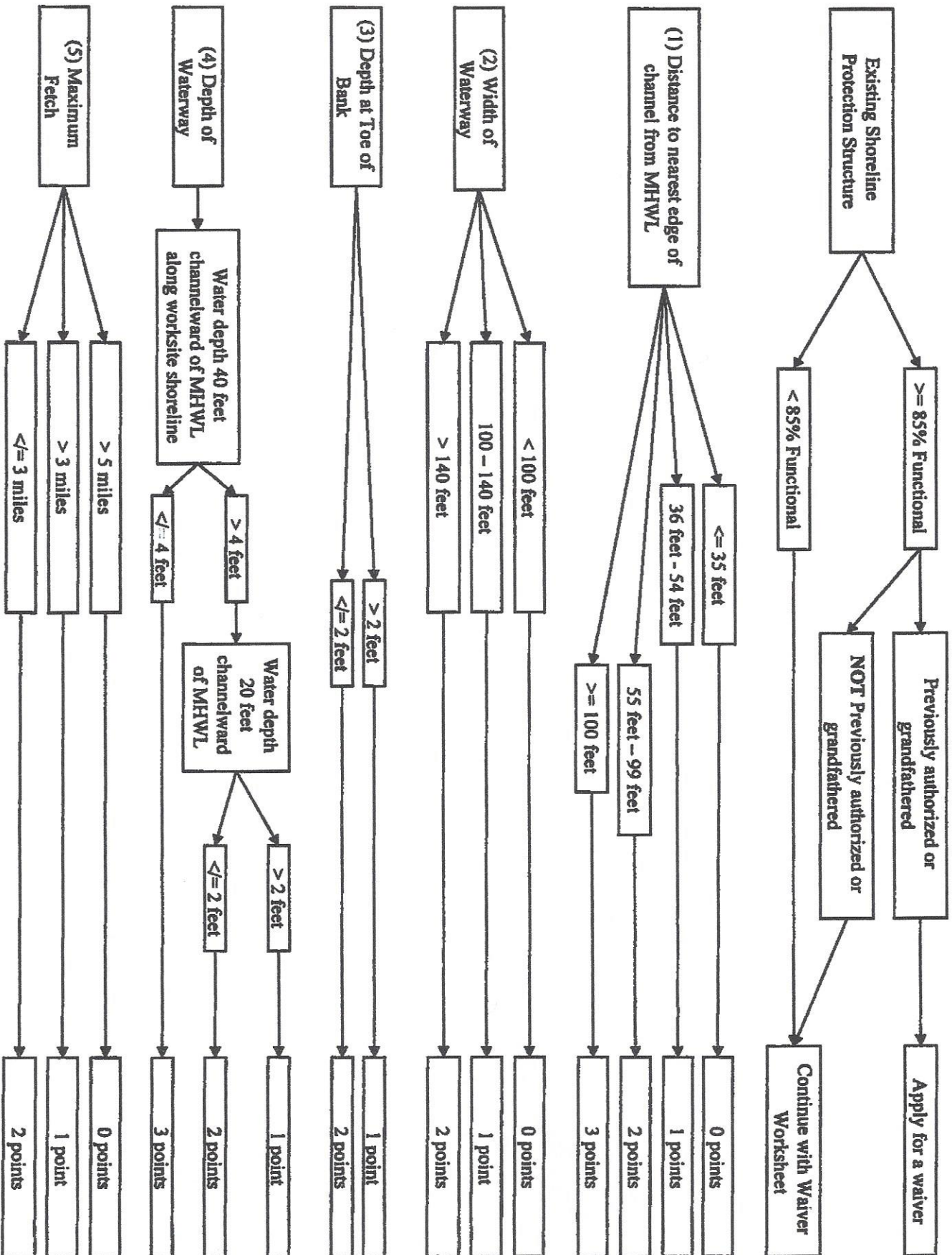


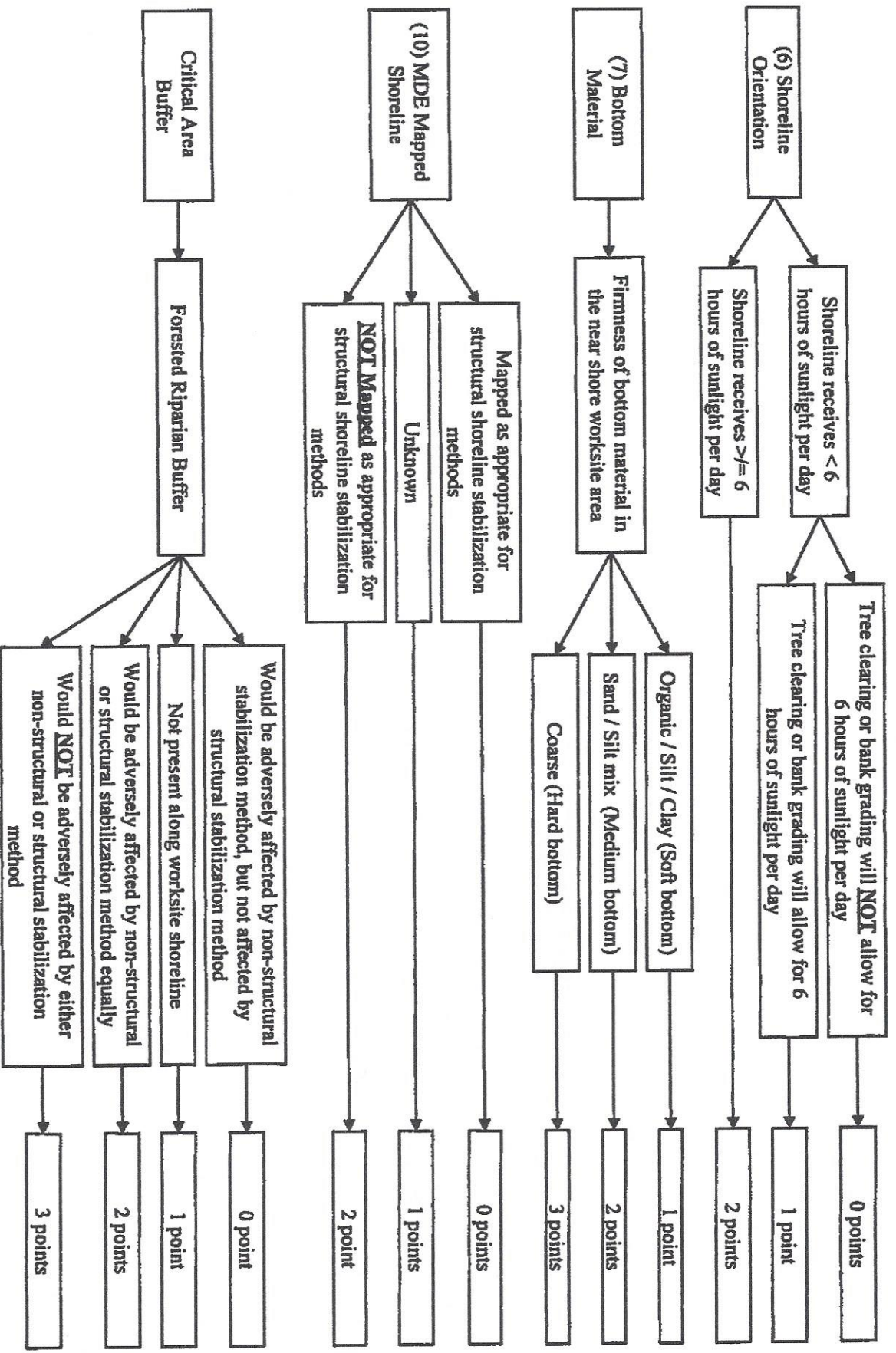
HB1313LivingShoreLineExhibit2.pdf


Uploaded by: Johnny Mautz

Position: FAV

MDE LIVING SHORELINE WAIVER WORKSHEET







MDE

3 - 8 Points
Apply for an exemption

9 - 14 Points
MDE makes site evaluation

14 - 21 Points
Living Shoreline stabilization method is required

TOTAL POINTS

HB1313LivingShoreLineExhibit3.pdf

Uploaded by: Johnny Mautz

Position: FAV

JOHNNY MAUTZ
Legislative District 37B
Caroline, Dorchester, Talbot,
and Wicomico Counties

Economic Matters Committee



The Maryland House of Delegates
6 Bladen Street, Room 424
Annapolis, Maryland 21401
410-841-3429 • 301-858-3429
800-492-7122 Ext. 3429
Fax 410-841-3523 • 301-858-3523
Johnny.Mautz@house.state.md.us

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

March 9, 2022

SPONSOR TESTIMONY
DELEGATE JOHNNY MAUTZ
DIST. 37B – CAROLINE, DORCHESTER, TALBOT & WICOMICO COUNTIES

HB 1313—ENVIRONMENT—EXCEPTION TO NONSTRUCTURAL SHORELINE STABILIZATION REQUIREMENTS

Attached is our correspondence and photo evidence with our constituent, Mr. Ellis Juan. He is unable to attend the hearing, but asked that his story be shared with the Committee.

Evidence List

- Email from Mr. Jaun
- Photo, Rip Rap #1
- Photo, Rip Rap #2
- Photo, Living Shoreline Area #1
- Photo, Living Shoreline Area #2
- Photo, Living Shoreline Area #3
- Photo, Living Shoreline Area #4
- Photo, Living Shoreline Area #5

Mautz, Johnny Delegate

From: Ellis J. Juan [REDACTED]
Sent: Monday, March 7, 2022 1:15 PM
To: Mautz, Johnny Delegate
Subject: Shore Erosion, 24499 New Post Road, St. Michaels, MD 21663
Attachments: IMG_2477.jpg; IMG_2476.jpg; IMG_2475.jpg; IMG_2474.jpg; IMG_2473.jpg; IMG_2472.jpg; IMG_2471.jpg; IMG_2470.jpg

Hi Johnny,

Attached please find the pictures of the shore line of our home. The first two pictures are from the area of our shoreline with rip-rap (about a 1/5 of our shoreline). Land has hold and some living shoreline plants are healthy and growing. The rest of the pictures are from the living shoreline (4/5 of our shoreline). You can see the results. Land is ceding and the trees and plants (living shoreline) are close to be taken down by water currents, wind (Gall), and summer and winter storms.

The house was built in 2000, and has had only two owners. The original owners (the Gloyds), and ourselves since October 2020. The previous owner did an investment in the living shoreline, but unfortunately weather conditions in our particular lot of land (i.e., a point overlooking at the Myles River not protected) means a high exposure to water current, winds and storms. The likelihood of living shoreline resisting such weather conditions are very dim at best.

Since we bought the house and found out about the situation we have been negotiating with the Maryland Department of Environment represented by Lane Engineering (in charge of the permits) to change to rip-rap as a way to protect our shoreline. We have not yet reach any conclusion but last set of communications seem to indicate a willingness to increase the area of the shore line with rip-rap (not the full area) though.

Hope these arguments can help reconsidering the use of living shoreline in these sensitive shore line areas.

Best regards,

Ellis J. Juan

Ellis J. Juan Associates, LLC
Principal
Infrastructure Finance, PPPs and City Planning.

24499 New Post Road
St. Michaels, MD 21663

[REDACTED]



Rip Rap #1



Rip Rap #2



Living Shoreline #1



Living Shoreline #2



Living Shoreline #3



Living Shoreline #4



Shoreline #8

Proposed_Amend_Sponsor_HB1313

Uploaded by: Johnny Mautz

Position: FAV



HB1313/963524/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

07 MAR 22
17:57:23

BY: Delegate Mautz

(To be offered in the Environment and Transportation Committee)

AMENDMENT TO HOUSE BILL 1313

(First Reading File Bill)

On page 2, in lines 21 and 33, in each instance, after “**CONTRACTOR**” insert “**OR CIVIL ENGINEER**”.

HB1313 T22 Session.pdf

Uploaded by: Theresa Kuhns

Position: FAV



House Bill 1313- Environment- Exception to Nonstructural Shoreline Stabilization Requirements

Position: Favorable

Maryland REALTORS® represents 30,000 Realtor members across the state and advocates for private property owners rights. For Maryland waterfront owners entrusted with riparian rights and a myriad of shoreline requirements, we have seen an increase in regulations over the last several years and believe HB1313 will help develop better practices by utilizing the professional expertise in protecting and stabilizing our shorelines.

According to the Department of Natural Resources, living shorelines are the result of applying erosion control measures that include a suite of techniques which can be used to minimize coastal erosion and maintain coastal process. The various techniques are used to protect, restore, enhance or create natural shoreline habitat. In 2008, the Living Shorelines Protections Act was passed and within it, regulations for waterfront property owners to abide by as stewards. Some highlights from the legislation included erosion control projects that now would be considered a type of "home improvement" and licensed home improvement contractors, marine contractors, builders, tree experts, landscaping firms, and others can lose their licenses for Critical Area violations.

Allowing property owners to utilize these expert and licensed services to help protect both the property owners interest and to best protect the shoreline is a vital step in planning these types of costly projects. While a waiver process is listed as part of the regulatory structure, it is our understanding it is *rarely* used and HB1313 will allow more flexibility for property owners. Creating a waiver exception allows the property owner, with the guidance of a professional who could lose their license over a violation, will help develop a better shoreline plan for the property while keeping the health and environment of the local waterways at the forefront for the long-term strategy.

For these reasons, the REALTORS® request a favorable report.

For more information, contact:

**bill.castelli@mdrealtor.org, susan.mitchell@mdrealtor.org,
lisa.may@mdrealtor.org or theresa.kuhns@mdrealtor.org**

HB 1313_CBF OPPOSE.pdf

Uploaded by: Doug Myers

Position: UNF



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

House Bill 1313

Environment - Exception to Nonstructural Shoreline Stabilization Requirements

Date: March 9, 2022

Position: **OPPOSE**

To: Environment and Transportation Committee

From: Doug Myers, Maryland Senior Scientist

Chesapeake Bay Foundation (CBF) **OPPOSES** HB 1313, which would hinder Maryland's efforts to restore living shorelines that filter pollution, provide habitat, and help protect private property from the effects of sea level rise. If adopted, the bill would create an exemption from the established waiver process, based solely on the determination of one licensed marine contractor.

Living Shorelines are a Key Tool in Restoring the Chesapeake Bay

Living shorelines are a proven natural approach to protecting tidal shorelines from erosion. They are created by planting native wetland plants, wetland grasses, shrubs, and trees at various points along a shoreline. Compared to hardened shorelines lined with riprap, bulkheads, and concrete, living shorelines offer many benefits to the environment. These include:

- Cleaner water by settling sediment and filtering pollution
- Better shoreline habitat for wildlife like nesting turtles and shorebirds
- Improved shallow water habitat for many plant and animal species like underwater grasses, blue crabs, and various types of finfish

The General Assembly's 2008 Law on Living Shorelines Rightfully Limited Exceptions for their Use

In Maryland, the *New Tidal Wetland Regulations for Living Shorelines* implement the requirements of the Living Shorelines Protection Act passed by the Maryland General Assembly during the 2008 Legislative Session.¹ The requirements provide narrow exemptions for the use of living shorelines for improvements to protect a property against shoreline erosion.² Living shorelines must consist of marsh creation or other nonstructural shoreline stabilization measures that preserve the natural environment unless a Waiver is obtained.³ An applicant should indicate the extent to which their project implements Maryland's living shoreline requirements or fits within an exemption.

¹ Maryland Department of the Environment, [New Tidal Wetland Regulations for Living Shorelines Effective February 4, 2013](#), last visited July 22, 2021.

² *Id.*

³ *Id.*

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

This Legislation Undermines the Authority and Basis of Maryland's Living Shoreline Law

Under current law, there are two exceptions to when a living shoreline must be used. The first is when the Department of Environment finds the area is inappropriate for a living shoreline. The second is when the property owner can demonstrate to the Department's satisfaction that a living shoreline is not feasible. Examples of the latter including in areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of a living shoreline. This legislation undermines the Department's determination in current law, and the focus on feasibility by proposing that the opinion of one marine contractor could stop a living shoreline project, with a determination that the site is "unsuitable" for a living shoreline.

CBF urges the Committee's UNFAVORABLE report on HB 1313. For more information, please contact Robin Clark, Maryland Staff Attorney at rclark@cbf.org and 443.995.8753.

ShoreRivers Opposition HB1313.pdf

Uploaded by: Elle Bassett

Position: UNF



Testimony in **OPPOSITION** of HB1313 – EXECPTION TO NONSTRUCTURAL SHORELINE STABILIZATION REQUIREMENTS

House Environment and Transportation Committee

March 9, 2022

Dear Chairman Barve and Members of the Committee,

Thank you for this opportunity to submit testimony in **OPPOSITION** of **HB1313** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with over 2,000 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

In 2008, the Maryland Legislature passed the Living Shoreline Protection Act, requiring shoreline property owners to use natural solutions to prevent erosion if feasible. HB1313 will allow marine contractors to provide exceptions to this requirement, effectively undoing the good that was done through the Living Shoreline Protection Act.

Living shorelines are projects that protect, restore, enhance, and or create natural shoreline habitat. They provide many co-benefits including protecting properties at risk of erosion, providing spawning and upland habitat, improving water quality by filtering pollution, minimizing storm surge and wave energy, and adapting land to sea level rise. Alternatively, structural shoreline practices do not provide any ecological benefits such as additional habitat or water quality improvements, nor do they absorb wave energy and storm surge. **Living shorelines better prepare our state for climate change and sea level rise and are therefore rightfully prioritized over structural stabilization practices such as bulkheads or riprap.**

The Maryland Department of the Environment currently has a Living Shoreline Waiver for any property owners that have shoreline mapped in an area appropriate for structural shoreline stabilization measures or if the project site is not suitable for a living shoreline due to high energy, extreme depths, or lack of space. Considering this waiver exists and is controlled by Department experts, giving this ability to marine contractors is unnecessary. If a marine contractor feels that a living shoreline is not feasible at a property, the homeowner can apply for a waiver through the Department.

HB1313 undermines the Living Shoreline Protect Act and creates redundancies in considering exemptions from the living shoreline requirement in the state. Criteria for obtaining a living shoreline waiver should remain at the discretion of the Department of the Environment to ensure that Maryland residents are doing all that we can to be more resilient, improve water quality, and protect, restore, and enhance our shorelines.

For these reasons stated above, ShoreRivers urges the Committee to adopt an **UNFAVORABLE** report on **HB1313**.

Sincerely,

Elle Bassett
Miles-Wye Riverkeeper, on behalf of:

ShoreRivers

Isabel Hardesty, Executive Director
Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper
Elle Bassett, Miles-Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

Main Office
114 S. Washington St.
Suite 301
Easton, MD 21601
443.385.0511

Regional Office
111A North Main St.
Galena, MD 21635
410.810.7556

shorerivers.org

Regional Office
207 S. Water St.
Unit B
Chestertown, MD 21620
410.810.7556

HB 1313_CWRP_Testimony_LTO.pdf

Uploaded by: Isaac Meyer

Position: UNF

Chesapeake Watershed Restoration Professionals

House Bill 1313 Environment – Exception to Nonstructural Shoreline Stabilization Requirements OPPOSE

March 7, 2022

Hon. Kumar Barve
Chairman, Environment and Transportation
Room 251
House Office Building
Annapolis, Maryland 21401

Chairman Barve, Vice-Chair Stein and members of the Committee,

The Chesapeake Watershed Restoration Professionals (CWRP) opposes HB 1313 and has significant concerns with the potential application of the legislation, if passed. CWRP was founded in November of 2020 and represents Maryland professionals whose daily work improves the health of Maryland's waters and our prized Chesapeake Bay.

This legislation proposes to allow licensed marine contractors to determine whether shoreline improvement projects should be allowed to avoid requirements to install non-structural shoreline protection. Although many of our members are Maryland Licensed Marine Contractors, and we love our marine contractors in Maryland, we do not think they are the appropriate entities to grant waivers as part of the permitting process. Because this is a permitting matter with ecological impacts, these determinations should be made by the Maryland Department of the Environment (MDE), or whichever regulatory agency has jurisdiction on the matter.

CWRP has concerns granting a private business with the authority to waive existing laws and regulations as it relates to protecting the environment.

We thank the committee for their consideration of this important legislation and the issues we have raised. We look forward to working with you in the coming years to strengthen Maryland's ecological restoration laws.

Sincerely,

Liam O'Meara
President
Chesapeake Watershed Restoration Professionals

HB1313_DNR_LOI_ENT_3-9-22.pdf

Uploaded by: Bunky Luffman

Position: INFO



Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary
Allan Fisher, Deputy Secretary

Bill Number: HB 1313

Short Title: Exception to Nonstructural Shoreline Stabilization Requirements

Department's Position: Letter of Information

Explanation of Department's Position

The Maryland Department of Natural Resources (DNR or Department) provides the following information on HB1313.

“Living shorelines” are a preferred method of shoreline protection because they trap sediment, filter pollution, and provide important aquatic and terrestrial habitat. DNR’s Shoreline Conservation Service provides assistance to many citizens who are concerned that a living shoreline will not work at their particular site. Many times this is not the case and our staff is able to work with them on a variety of different site conditions, even on properties that have a significant fetch (20+ miles) and located in high wave energy environments. The fetch for a particular shoreline is the distance traveled by wind and or waves across open water.

For instances where a living shoreline will not be feasible, Maryland’s 2008 Living Shoreline Protection Act provides a process by which a waiver may be obtained. Reasons for a waiver include excessive erosion, severe high energy conditions, extreme water depths, or the fact that the waterway is too narrow for effective use of nonstructural shoreline stabilization measures.

For any additional information, please feel free to contact our Legislative and Constituent Services Director, Bunky Luffman.

HB1313 LOI w concern.pdf

Uploaded by: Tyler Abbott

Position: INFO



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

March 9, 2022

The Honorable Kumar P. Barve
House Environment and Transportation Committee
House Office Building, Room 251
Annapolis, Maryland 21401

Re: House Bill 1313 – Environment – Exception to Nonstructural Shoreline Stabilization Requirements

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 1313, entitled *Environment - Exception to Nonstructural Shoreline Stabilization Requirements*. While we appreciate the interests of the sponsor, we would like to offer the following concerns about this legislation.

HB 1313 is emergency legislation that would amend Title 16 of the Environment Article (the Tidal Wetlands Act) to create a new exemption from the use of nonstructural shoreline stabilization measure to protect against shore erosion (i.e., living shorelines or marsh creation), for areas where a licensed marine contractor determines such measures are unsuitable and exempt from the waiver process established in regulations by MDE, if a licensed marine contractor determines that a person's property is not suitable for nonstructural stabilization measures.

As currently drafted, HB 1313 would significantly limit the Department's authority to determine when and where nonstructural shoreline stabilization measures are appropriate as this bill would give discretion to marine contractors without any guidance from the Department. Without this guidance, HB 1313 would have significant potential to undermine the goals of the 2008 Living Shorelines Act, and lead to a proliferation of structural shoreline stabilization measures, which are less environmentally protective. Though marine contractors must be licensed in the state to do construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under state or private wetlands, they do not necessarily have sufficient expertise to make the regulatory determination of when a living shoreline or marsh creation project is or is not appropriate. Additionally, HB 1313 does not give any guidance or factors that the marine contractor must consider in making this determination.

Per the reasoning mentioned above, marine contractors lack the authority to implement the full criteria set by statute and regulations for decisions on private wetland permits as well as state wetland licenses delegated to MDE by the Board of Public Works (BPW). In addition, for wetland licenses issued by the BPW, it is unclear whether MDE may prepare a report and recommendation to BPW based solely on the marine contractor decision, or that the marine contractor must prepare the report and be available for questioning by the BPW. It is also unclear whether marine contractors would be required to comply with public notice and hearing requirements to respond to public comments regarding their decision, which is in effect deciding the approvable project scope and authorizable impacts for MDE. If MDE were to remain legally responsible, the

agency would be forced to justify decisions it did not make.

Aside from policy concerns, HB 1313 also presents some legal challenges. For example, once a marine contractor has determined that a person's property is unsuitable for a nonstructural shoreline stabilization measure, a permit or license under Title 16 is still required from MDE or BPW before the person may construct a bulkhead, revetment, or other structural measure. The Department's or BPW's permit or licensing decision can be challenged through judicial review. If a person - such as a concerned neighbor or an environmental or citizens group - sought to challenge an authorization for a bulkhead that had been exempted by a marine contractor, MDE or BPW would have to defend a decision made by that marine contractor, instead of by a qualified employee of the state. Conversely, marine contracting companies may face legal liability for decisions they make on living shoreline projects. Marine contractors would be expected to justify their recommendation to MDE or BPW and may be expected to resolve disputes between other state, local, and federal agencies over the shore erosion practice which would be acceptable to all involved parties.

Pursuant to the statute's directive, MDE, in consultation with the Maryland Department of Natural Resources, has by regulation developed a waiver process for a person to obtain an exception from the nonstructural shoreline stabilization measure requirement. There currently are exceptions in the statute to the living shoreline preference for areas that have been mapped by MDE as appropriate for structural shoreline stabilization measures, and in areas where a property owner demonstrates to MDE's satisfaction that nonstructural measures are not feasible due to factors such as an area being exposed to heavy tides or subject to excessive erosion. The Department is scheduled to launch updated shoreline stabilization maps, which identify shorelines that are appropriate for structural shoreline stabilization measures.

Thank you for considering the Department's concerns regarding this legislation. We will continue to monitor HB 1313 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal flourish extending to the left.

Tyler Abbott

cc: The Honorable Johnny Mautz
Lee Currey, Director, Water and Science Administration