



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 line extending to the left.

Tyler Abbott

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