

Maryland Department of Environment Nontidal Wetlands and Waterway Construction Permitting Process



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Overview

- Definitions
- Statutes and Regulations
- Application Review Process
- Coordination with Federal and State Agencies
- Nontidal Wetland and Waterway Construction Division's Contacts

Definition of a nontidal wetland

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- Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Nontidal Wetland Parameters

- Hydrology
- Hydrophitic Vegetation
- Hydric Soils



Types of Nontidal Wetlands

- Forested: a portion of a nontidal wetland is dominated by woody vegetation greater than 20 feet in height
- Scrub-shrub: a portion of a nontidal wetland is dominated by woody vegetation less than 20 feet in height
- Emergent: a portion of a nontidal wetland dominated by erect, rooted, herbaceous vegetation

Waters of the State

"Waters of the State" includes both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. The floodplain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency is included as waters of the State.

NONTIDAL WETLANDS PROTECTION ACT OF 1989

- Declares a goal of “no net loss” of wetland acreage and function and to strive for a gain over time
- Other goals of the Nontidal Wetlands Protection Act
 - **Protect waters of the State**
 - **Prevent further resources degradation and losses by regulation all activities impacting nontidal wetlands**
 - **Expedite application process by coordinating review and establishing review deadlines**

NONTIDAL WETLAND PROTECTION ACT (1989) HIGHLIGHTS

- ⦿ Consistent State/federal wetland definition
- ⦿ Use of 1987 USACOE Wetland Delineation Manual and Regional Supplements
- ⦿ Regulation of a 25-foot nontidal wetlands buffer
- ⦿ Regulation of 100-foot expanded buffer for Nontidal Wetlands of Special State Concern
- ⦿ Regulation of Isolated Nontidal Wetlands

Waterway Construction Regulations

- Annotated Code of Maryland, Environment Article, Title 26, Subtitle 17, Chapter 04 : Construction on Nontidal Waters and Floodplains
- Any activity which changes the course, current or cross-section of waters of the State, including the 100-year floodplain, requires a permit. Waters of the State does not include ephemeral streams.

REGULATED ACTIVITIES

- Filling, excavating, dumping, discharging of material, driving piles/placing obstructions
- Grading/removal of material that would alter existing topography
- Manipulation and /or removal of vegetation
- Dams and reservoirs (SSDS);
- Bridges and culverts;
- Temporary construction (e.g. utility lines);
- Repair and maintenance
- Stream restoration

Exempt Activities

- Forestry and Agricultural Activities
- Agricultural drainage systems that lower the water level in the soil, with a total drainage area \leq to 2,500 acres (PDAs)
- Removal/demolition of residential structures
- Temporary Sediment Control Structures
- Stormwater Management Facilities
- Small ponds which meets the requirements of Regulation .05G

Application Review Process

- Identification of the Resource
- Pre-Application Meeting to Verify Wetland Delineation
- Submit Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland
- Application Review
- Issuing Letter of Authorization, Authorization to Proceed or Permit

Application Review Process

- ④ Purpose and Need
- ④ Alternatives Analysis
- ④ Avoidance & Minimization
- ④ Mitigation

Permit Review Process

⦿ Avoidance

- Alternative sites
- Project Design

⦿ Minimization

- Project redesign, configuration and scope
- BMP's

Regulatory Requirements

- Ability of all on-site construction to withstand the impacts of the 100-year flood event;
- Flooding on adjacent properties;
- Erosion of the construction site or stream bank (WQC); and
- Environmental effects, such as the project's impacts on existing in-stream fisheries; wildlife habitat; or rare, threatened or endangered species.

Mitigation

- Creation, Restoration & Enhancement
- Wetland Impacts are Mitigated by Purchasing Credits from Approved Mitigation Banks; Permittee-Responsible Mitigation; Payment to the Nontidal Wetland Compensation Fund
- Wetland Losses Through Letters of Authorization are Mitigated by Programmatic Mitigation

Authorizations

⦿ Letter of Authorization

- Less than 5,000 square feet of permanent impacts and no significant plant or wildlife value (no public notice or mitigation required)

Authorization to Proceed

- Minor or temporary impacts to Waters of the State only

⦿ Permit

- Greater than 5,000 square feet of permanent impact and/or the presence of significant plant or wildlife value (public notice and mitigation required)

Coordination with Federal and State Agencies

- ◉ During the Application Review Process the Nontidal Wetlands Division Coordinates with the Following Agencies on an As-Needed Basis:
 - U.S. Army Corps of Engineers
 - U.S. Fish and Wildlife Service
 - Maryland Department of the Environment Programs (e.g., Dam Safety, Mining, Water Appropriations)
 - Maryland Department of Natural Resources (i.e., Critical Area, Environmental Review, Forestry, Wildlife and Heritage)
 - Maryland Historical Trust

“Umbrella” Authorization Procedure

- An “Umbrella” Authorization is issued by MDE to utility companies for long utility lines in need of inspection and, as necessary, repair.
- The purpose is to streamline the review and approval process of utility inspection and repair projects.
- The “Umbrella” Authorization” covers temporary impacts to nontidal wetlands, nontidal wetland buffer, waterways and floodplain, and up to 5,000 square feet of permanent nontidal wetland and waterway impacts.

“Umbrella” Authorization Procedure,

- ① Submit a Joint Federal/State Application to MDE.
- ② Application is categorized as a “B” under the MDSPGP-5 and sent to the Army Corps.
- ③ Upon satisfactory completion of review, MDE issues a Letter of Authorization for the overall project.

“Umbrella” Authorization Procedure, Continued

- Prior to work commencing at a specific location, Authorized Person submits a modification request to MDE.
- MDE screens the modification request for rare, threatened or endangered species and cultural/archeological resources.
- Modification is issued within 30 days*.
- Application fee (\$750) and modification fee (\$250) apply.

Nontidal Wetlands Division Organization

- ◉ Amanda Sigillito, Chief, ext.3766
 - Eastern Region (CO, DO, KE, QA, TA, SO, WI, WO), Ace Adkins, Region Chief, Salisbury Field Office (410-713-3685)
 - Central Region (AA, BA, BC, CA, CE, CH, HA, PG, SM), Jeff Thompson, Region Chief, 410-537-3828
 - Western Region (AL, CL, FR, GA, HO, MO, WA), Sean McKewen, Region Chief, Frostburg Field Office (301-689-1493)
 - Mitigation and Technical Assistance Section, Kelly Neff, Section Chief, 410-537-4018

Waterway Construction Division Organization

- William Seiger, Chief 410-537-3821
- □ Review Engineers
- • Wuhib Bayou; Frederick, Washington E of I-81 x. 3605
- • Paul Busam; Garrett, Allegany, Washington W of I-81 x. 3213
- • Imtiaz Choudhry; Prince Georges x.3813
- • Debra Correia; Carroll, Howard x.3900
- • Mohammad Ebrahimi; Calvert, Charles , St. Mary's, Anne Arundel* x. 3816
- • Matt Hynson; Restoration Projects State-wide x.3797
- • Randah Kamel; Restoration Projects State-wide x.4480
- Hanifah Parker-Morrison; Harford, Cecil x.3939
- • Hira Shrestha; Montgomery x. 4247
- • Phatta Thapa; Balt. Co & City x.3641
- • Vacant; Eastern Shore

A photograph of a dense forest. The foreground is filled with a thick layer of green ferns. In the background, numerous thin tree trunks stand vertically, with some sunlight filtering through the canopy. The word "Questions?" is overlaid in the center in a bold, black, sans-serif font.

Questions?