

Nontidal Wetlands Division

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Maryland Department of the Environment

County Engineers Association of Maryland

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Maryland
Department of
the Environment





Overview

- Regulated resources
- Definition of a nontidal wetland
- Nontidal wetland parameters
- Regulated activities
- Common types of county projects
- Exempt activities
- Application review process
- Types of authorizations
- Significant plant or wildlife value
- Coordination with federal and state agencies
- Common issues with applications



Regulated resources

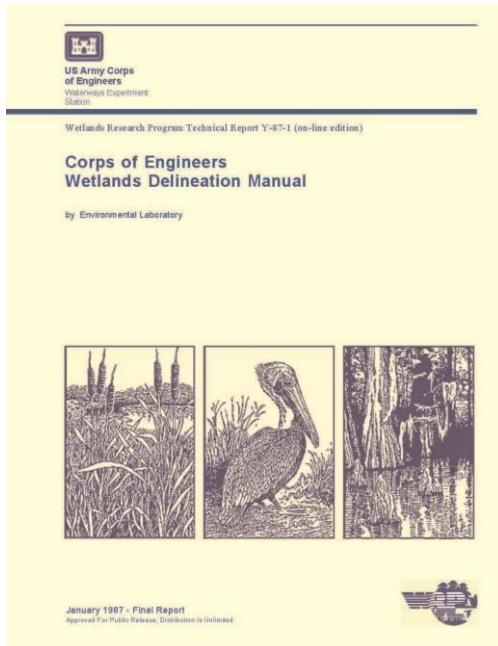


Photo from Environmental Laboratory. (1987). "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

- Nontidal wetlands
 - Consistent state and federal definition
 - Use of 1987 Federal Manual and regional supplements (free to download)
 - Jurisdiction can differ between state and federal
- 25-foot nontidal wetland buffer
- 100-foot expanded nontidal wetland buffer for wetlands of special state concern

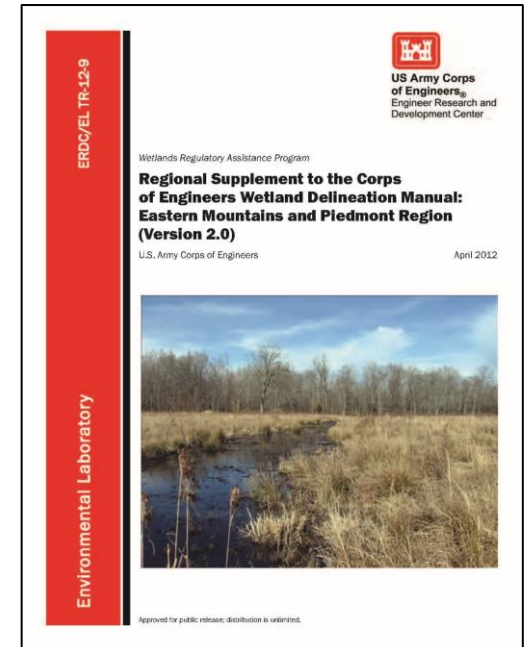


Photo from U.S. Army Corps of Engineers. 2012. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region Version 2.0, ed. J. F. Berkowitz, J. S. Wakeley, R. W. Lichvar, C. V. Noble. ERDC/EL TR-12-9. Vicksburg, MS: U.S. ArmyEngineer Research and Development Center.



Definition of a nontidal wetland

- COMAR 26.23.01.01B(62):
 - (a) “Means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.”
 - (b) “Is determined according to the Federal Manual.”
 - (c) “Does not include tidal wetlands regulated under Environmental Article, Title 16, Annotated Code of Maryland.”



Nontidal wetland parameters

- Hydrology
- Hydrophytic Vegetation
- Hydric Soils



Hydrology





Hydrophytic vegetation





Hydric soils





Regulated activities

- Per COMAR 26.23.01.01B(74): Regulated activity:
 - (a) Means any of the following activities which are directly undertaken or originate in a nontidal wetland, or within a buffer or expanded buffer of a nontidal wetland:
 - (i) Removal, excavation, or dredging of soil, sand, gravel, mineral, organic matter, or materials of any kind;
 - (ii) Changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
 - (iii) Disturbance of the water level or water table by drainage, impoundment, or other means;
 - (iv) Dumping, discharging of material, or filling with material, including the driving of piles, and placing of obstructions;
 - (v) Grading or removal of material that would alter existing topography; and
 - (vi) Destruction or removal of plant life that would alter the character of a nontidal wetland; and
 - (b) Does not include an agricultural activity or forestry activity as defined in this subtitle.



Common types of county projects

- Road projects
 - Waterway crossing repairs
 - Road relocation
 - New roads
- Aboveground and underground utilities
 - Replacements
 - New lines
 - Combined sewer overflow separations
- Business parks

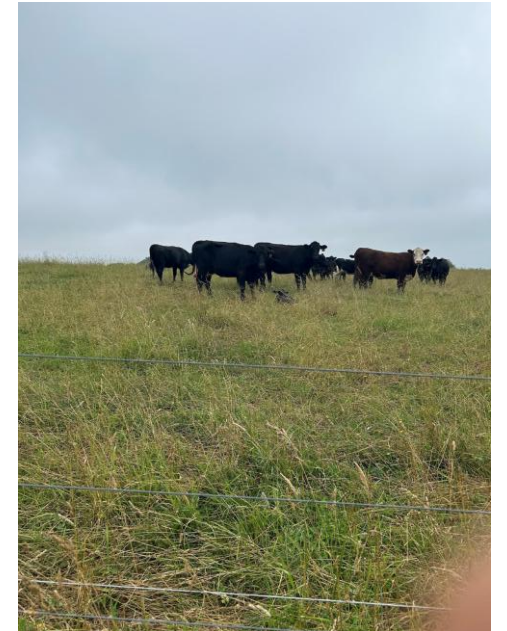


HDD boring photo courtesy of Leonard Cage, MDE Compliance Program.



Exempt activities

- General maintenance activities
 - Per COMAR 26.23.01.01B(57): “Maintenance means activities undertaken to prevent the deterioration, impairment, or need for repair of a serviceable fill area, structure, right-of-way, or land use, which includes management of vegetation and replacement of structural components.”
 - Consider access, storage, staging, etc
- Operational stormwater management facilities
- Forestry activities
- Agricultural activities





Application review process

- Pre-application meetings
- Submit Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland
- Review is coordinated with appropriate federal and state agencies
- 30-day public notice period (if applicable)
- Public hearing (if applicable and requested)
- Issuing Letter of Authorization or Permit



Application review process

- Applicant information
- Project description
- Project location
- Project purpose and need
- Reduction of impacts
 - Plan and design to first avoid and then minimize impacts
 - Alternate designs evaluated
 - Project redesign, configuration and scope
 - Include reasons why impacts could not be avoided or minimized further



Application review process

- Alternative site analysis
- Mitigation plan
 - Mitigation banks
 - Permittee-responsible mitigation
 - Nontidal Wetlands Compensation Fund
- Do not be afraid to submit appendices if descriptions will not fit



Types of authorizations

- Letter of Authorization:
 - Less than 5,000 square feet of permanent impacts and no significant plant or wildlife value
 - Installation of utility lines with no permanent impacts
 - Does not include intake/outfall structures, pipelines transporting liquid other than water or sewage, natural gas lines larger than 12 inches in diameter, and storm water conveyance systems
 - Construction of overhead transmission lines with no permanent impacts
 - Wetland conversion
 - Repairs of roadbeds, utilities, culverts, and bridges provided the existing footprint is maintained and does not result in permanent wetland impacts
 - Public notice and mitigation are not required



Types of authorizations

- Permit:
 - Greater than 5,000 square feet of permanent impact and no significant plant or wildlife value
 - Any permanent impacts and significant plant or wildlife value
 - Adjacent property owner notification
 - Public notice
 - Public hearing if requested
 - Mitigation provided for all permanent nontidal wetland impacts

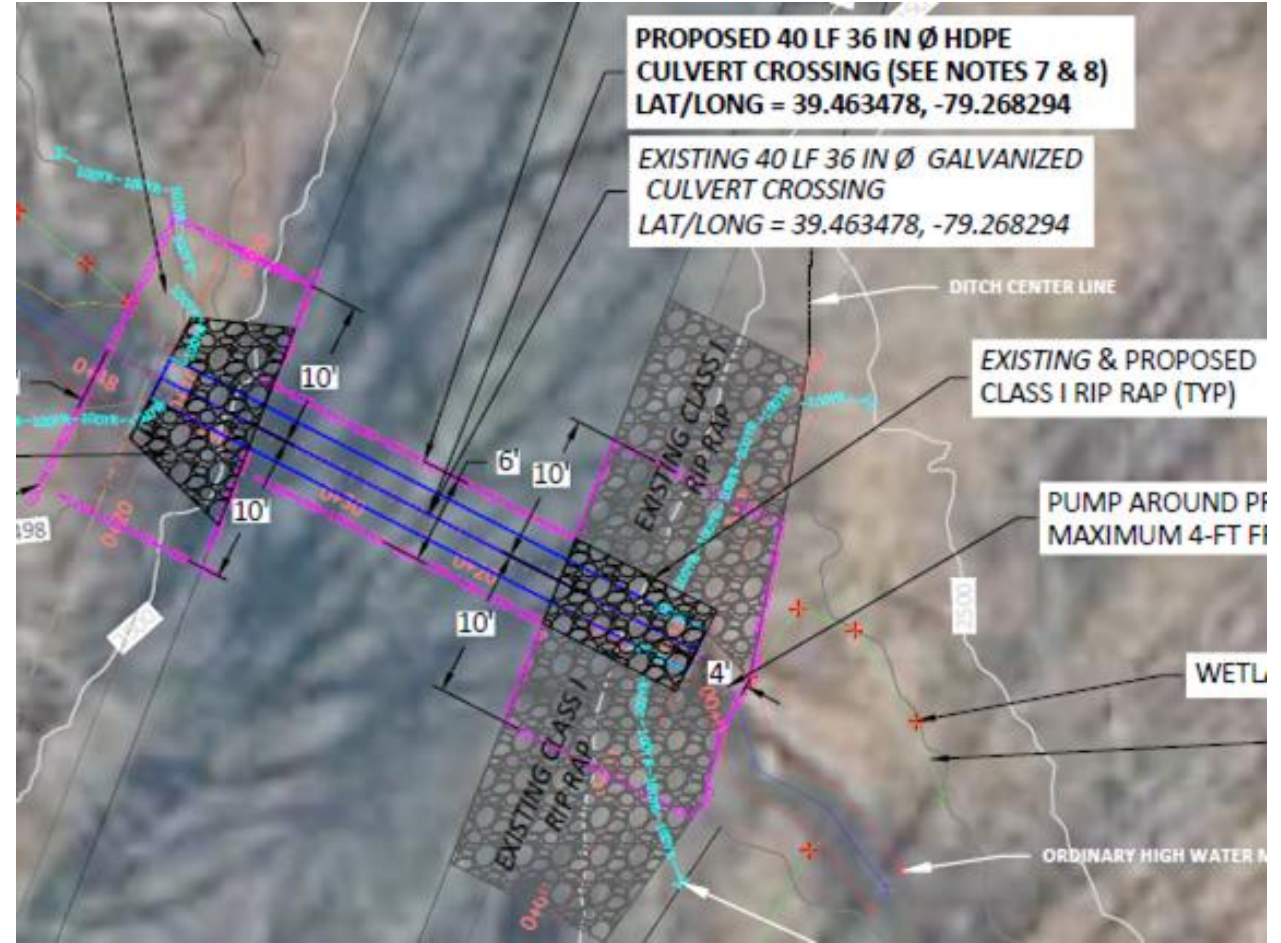
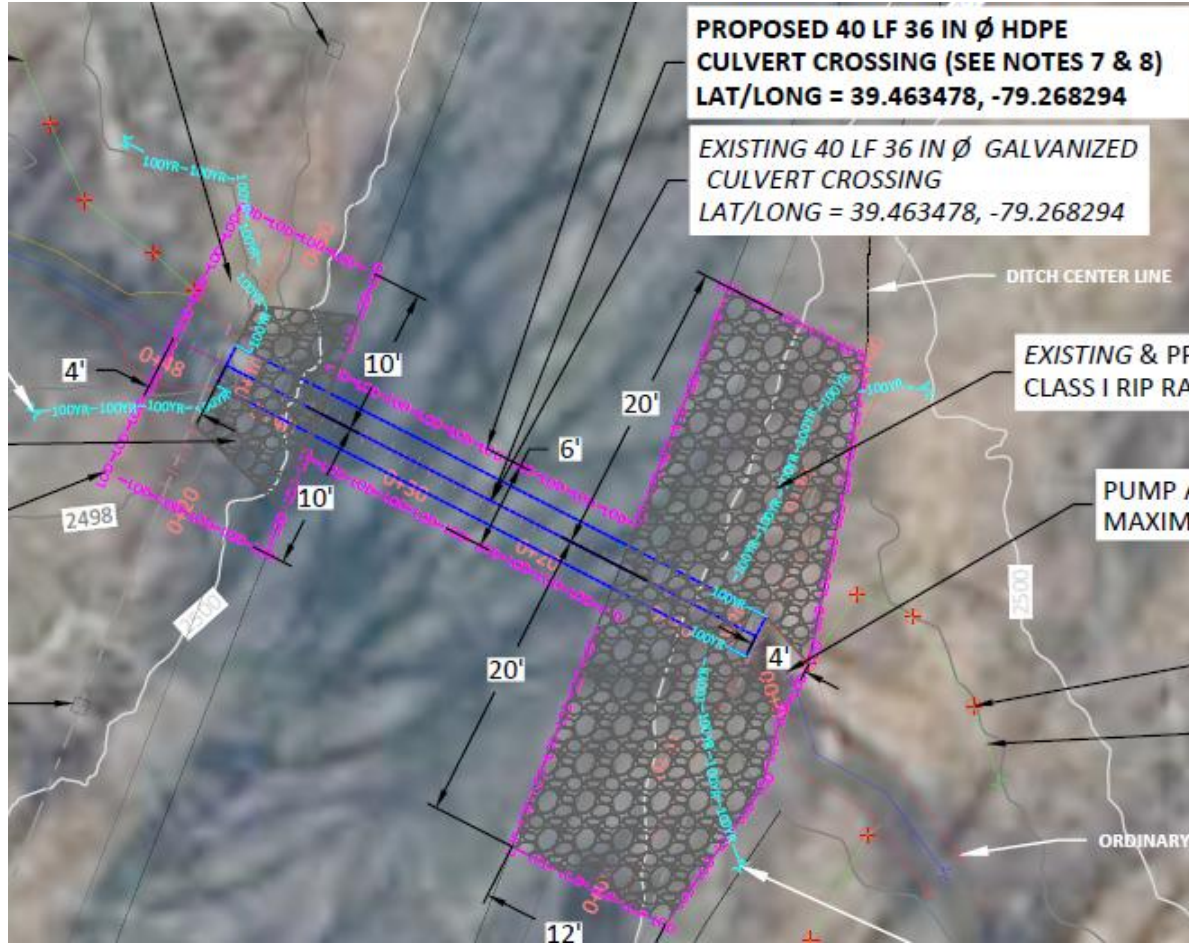


Significant plant or wildlife value

- Per COMAR 26.23.01.01B(80): Significant plant or wildlife value means a nontidal wetland:
 - (a) Of the following unusual or unique community types:
 - (i) Bogs;
 - (ii) Areas with bald cypress (*Taxodium distichum*), Atlantic white cedar (*Chamaecyparis thyoides*), red spruce (*Picea rubens*), balsam fir (*Abies balsamea*), or American larch (*Larix laricina*) that contain at least 20 percent of these species in any strata as determined by the federal manual; or
 - (iii) Delmarva bays;
 - (b) With water discharge that maintains minimum stream base flow important for maintaining plant and wildlife species;
 - (c) With threatened or endangered species, or species in need of conservation;
 - (d) **Adjacent to Class III or Class IV waters defined in COMAR 26.08.02.08;**
 - (e) **Of special State concern;**
 - (f) Supporting vernal pools; or
 - (g) That is regularly or periodically influenced by tidal waters.

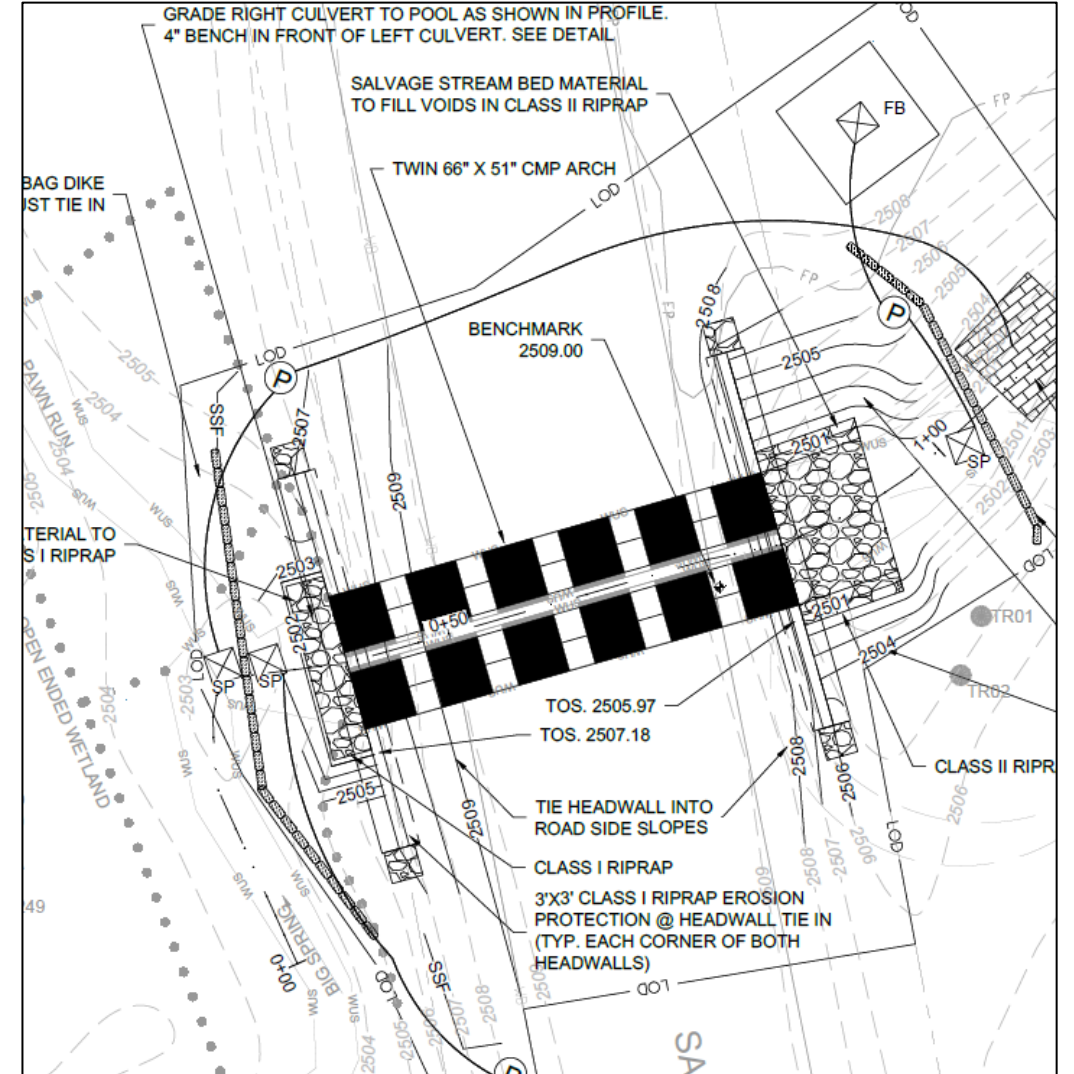
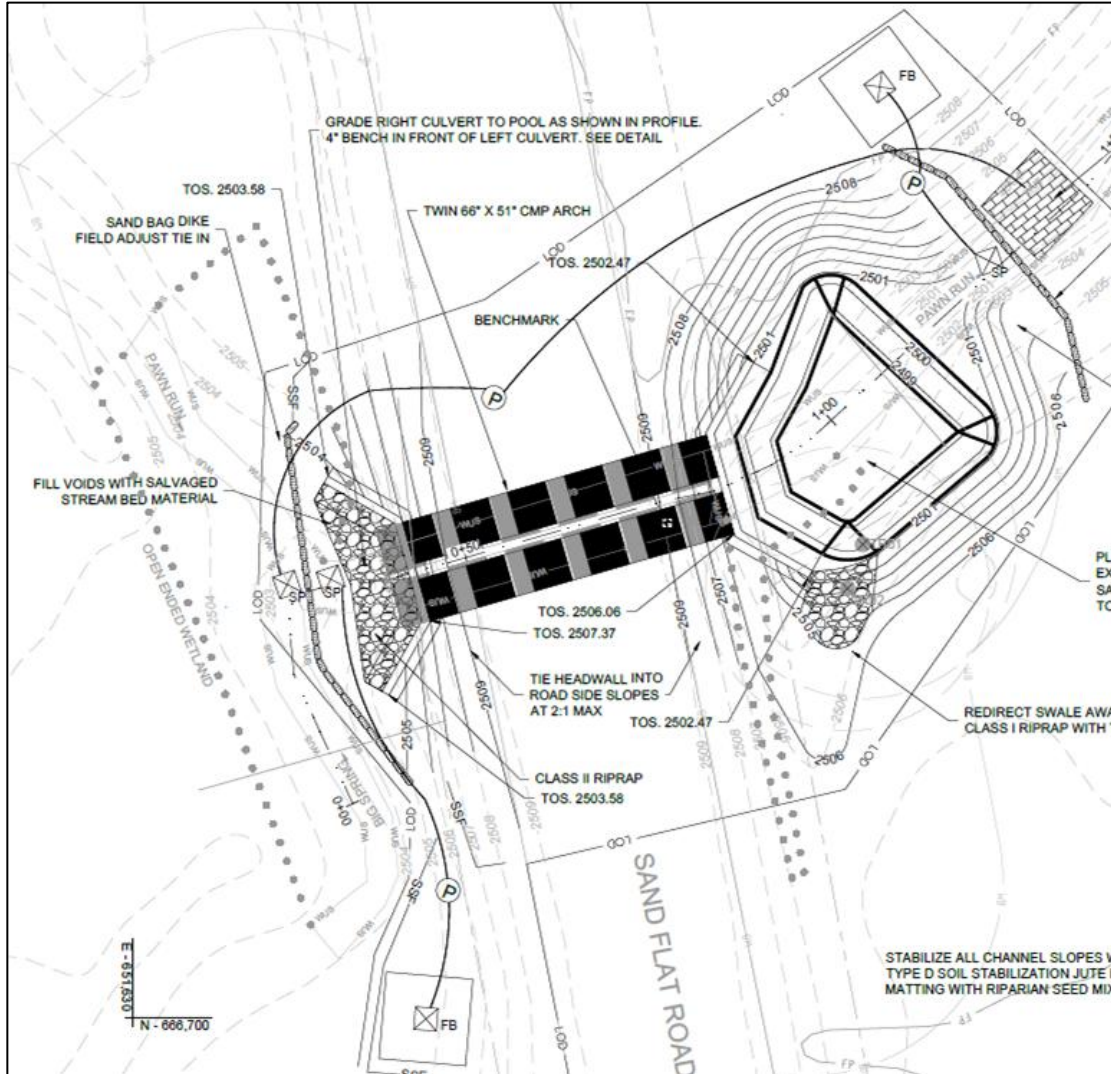


Types of authorizations





Types of authorizations





Coordination with federal and state agencies

- During the application review process, we coordinate with the following agencies on an as-needed basis:
 - U.S. Army Corps of Engineers
 - Categorization of projects under MDSPGP
 - Federally endangered species
 - U.S. Fish and Wildlife Service
 - Maryland Department of Natural Resources
 - Maryland Historical Trust
 - Other Maryland Department of the Environment programs (Dam Safety, Mining, Tier II review)
 - Changes to Tier II reviews



Common issues with applications

- Impacts are proposed outside of the county right-of-way
 - Permission needs to be requested and granted from the impacted property owners
- Parts of the application are missing or incomplete
 - Commonly the information for blocks 6-9 must be requested if the project does not qualify for a Letter of Authorization
 - Pre-application meetings can help the applicant understand if the project could qualify for a Letter of Authorization
- Public Notice Billing Approval Form and Certification of Notification form were not submitted for projects requiring a permit
 - Forms can be found on our website
 - https://mde.maryland.gov/programs/water/wetlandsandwaterways/permitsandapplications/pages/nontidal_permits.aspx



Common issues with applications

5. **LETTER OF AUTHORIZATION:** If you are applying for a letter of authorization for activities in nontidal wetlands and/or their buffers, explain why the project qualifies:

- A. No significant plant or wildlife value and wetland impact
 1. Less than 5,000 square feet
 2. In an isolated nontidal wetland less than 1 acre in size
- B. Repair existing structure/fill
- C. Mitigation Project
- D. Utility Line
 1. Overhead
 2. Underground
- E. Other (explain)
- F. Check here if you are **not** applying for a letter of authorization.

IF YOU ARE APPLYING FOR A LETTER OF AUTHORIZATION, PROCEED TO BLOCK 10

6. **ALTERNATIVE SITE ANALYSIS:** Explain why other sites that were considered for this project were rejected in M. Also check any items in D-L if they apply to your project. **(If you are applying for a letter of authorization, do not complete this block.)**

- A. 1 site
- B. 2 - 4 sites
- C. 5 or more sites

Alternative sites were rejected/not considered for the following reason(s):

- D. Cost
- E. Lack of availability
- F. Failure to meet project purpose
- G. Located outside general/market area
- M. Explanation:
- H. Greater wetlands impact
- I. Water dependency
- J. Inadequate zoning
- K. Engineering/design constraints
- L. Other

7. **PUBLIC NEED:** Describe the public need or benefits that the project will provide in F. Also check Items in A-E that apply to your project. **(If you are applying for a letter of exemption, do not complete this block.)**

- A. Economic
- B. Safety
- C. Health/welfare
- D. Does not provide public benefits
- E. Other _____
- F. Description

8. **MITIGATION PLAN:** Please provide the following information. **(If you are applying for a letter of authorization outside of the Critical Area, do not complete this block.)**

- a. Description of a monetary compensation proposal, if applicable (for **state requirements** only). Attach another sheet if necessary.
- b. Give a brief description of the proposed mitigation project.
- c. Describe why you selected your proposed mitigation site, including what other areas were considered and why they were rejected.
- d. Describe how the mitigation site will be protected in the future.

9. **HAVE ADJACENT PROPERTY OWNERS BEEN NOTIFIED?** A. Yes B. No Provide names and mailing addresses below (Use separate sheet, if necessary). **(If you are applying for a letter of exemption, do not complete this block.)**

- a. _____
- b. _____
- c. _____



Common issues with applications

CERTIFICATION OF NOTIFICATION

ATTENTION APPLICANT:

Please complete this form and return to Wetlands and Waterways Protection Program, Water and Science Administration, 1800 Washington Boulevard, Baltimore, MD 21230. Be sure to include the Division number, a copy of the tax map and your notification letter, and sign the form. Please include complete names and complete addresses, including zip codes. Your application is incomplete until this certification is received.

Tracking No: _____ Division No: _____
Assigned Staff: _____

Description of the project:

Please list all persons notified below: (continue on reverse side or attach additional sheets if necessary)

NAME	ADDRESS
_____	_____
_____	_____
_____	_____

If delivery was not made to certain persons, please list those persons and the reasons for non-delivery on the reverse side of this form.

I hereby certify that I have notified all persons who own properties which have a common boundary with my property. The appropriate local officials have been notified. I have notified them by certified mail or in person.

Signature of Applicant Date

Please Print Name Telephone Number

MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION
NONTIDAL WETLANDS AND WATERWAYS DIVISION
1800 WASHINGTON BLVD., SUITE 430
BALTIMORE, MARYLAND 21230
410-537-3745

PUBLIC NOTICE BILLING APPROVAL FORM

PROJECT NUMBER _____

I agree to pay all expenses associated with the publishing of a public notice for the Nontidal Wetlands and Waterways Application submitted by _____ (Applicant's Name), which was dated and signed by you on _____.

Applicant/Agent Signature

Printed Name of Signee

TRACKING NO. _____

Please Print

Billing Address _____

Phone Number _____



Common issues with applications

- More detail is needed showing how avoidance and minimization was applied to the project
 - Alternate designs or alignments explored
 - Discussion of barriers to further minimization of impacts
- The limits of disturbance does not account for all permanent and temporary impacts
- The project is one phase of a larger project
 - Entire and complete projects



Questions?

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Thank you



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