



A CITIZEN'S GUIDE TO Protecting Wetlands in Maryland





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This guide was written and designed by Christopher Delfs under the direction of Senior Planner George Maurer. It draws its information about the Critical Area Act primarily from the Code of Maryland Regulations, Title 27 and from the Maryland Department of Natural Resources web site. Cover photo by Lauren Wenzel.

This guide is a supplement to the Chesapeake Bay Foundation publication "Influencing Development in Your Community: A Citizen's Guide For Maryland." Other supplements that provide more detail on specific conservation programs in Maryland include:

- "A Citizen's Guide to the Forest Conservation Act in Maryland"
- "A Citizen's Guide to the Critical Area Program in Maryland"

These publications are available online from the Chesapeake Bay Foundation at www.savethebay.cbf.org.



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I. INTRODUCTION

This guide supplements the Chesapeake Bay Foundation publication, *"Influencing Development in Your Community,"* a citizen's guide providing basic information about the development process. It aims to help citizens understand and influence the planning and permitting decisions to protect wetlands. Citizen involvement in the earliest stages of the process is the best way to minimize impacts to wetlands.

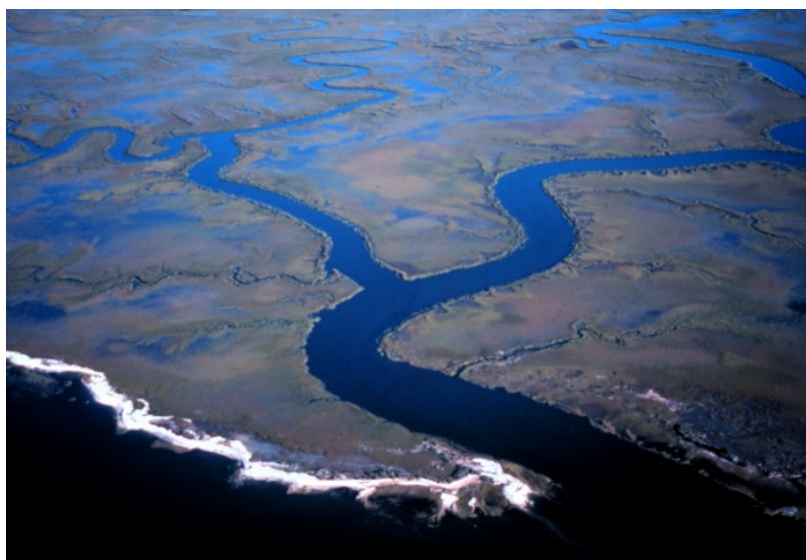


Photo: National Oceanic and Atmospheric Administration



II. ABOUT WETLANDS



What is a wetland, and why are they important?

Wetlands are the link between land and water. They are areas of transition, where the flow of water and the nutrients and sediments it carries creates unique ecosystems that support a wealth of plant and animal life. Wetlands are not always wet year-round, and some of the most important wetlands are wet for only part of the year. In addition to providing essential habitat for fish, birds, and other wildlife, wetlands also provide valuable economic benefits,

such as controlling floods, filtering pollutants, and providing recreational opportunities.

The U.S. Environmental Protection Agency estimates that more than half the nation's wetlands have been drained and converted to other uses. In Maryland, the loss has been almost 60 percent. Moreover, over 70 percent of the nation's remaining wetlands are privately owned, and are protected primarily through federal and state laws. These laws require developers to minimize wetland impacts and, when unavoidable, to "mitigate" wetland loss by creating or restoring wetlands. While a worthwhile goal, wetland mitigation rarely replaces all of the ecological values of wetlands that are lost. Therefore it is especially important for citizens to be involved in projects affecting wetlands, and to become effective advocates for wetland protection. This guide supplements the Chesapeake Bay Foundation citizen's guide, *"Influencing Development in Your Community,"* by providing information to help citizens understand and influence the planning and permitting decisions to protect wetlands. Public involvement in the earliest stages of the process is the best way to minimize impacts to wetlands.

What Kind of Wetland?

For management purposes, Maryland's wetlands are classified as:

- *tidal wetlands*, which fringe the shorelines of the Chesapeake and Coastal Bays and their tidal tributaries, and
- *nontidal wetlands*, which are not affected by tides.

Maryland has also identified Wetlands of Special State Concern, which contain rare, threatened or endangered species or unique habitat.



About Wetlands

This document is arranged in the following five sections.

- **The Permitting Process**

Both tidal and nontidal wetlands are protected by state and federal laws. If impacts to wetlands or streams are proposed as part of a project, an applicant must provide detailed information to the Maryland Department of the Environment (MDE) and the U.S. Army Corps of Engineers (Corps). This section describes the types of activities that require permits, and provides a flow chart of the complex approval process.



Photo: Maryland Department of Natural Resources

- **How to be An Effective Advocate for Wetlands Protection**

During the permitting process, public notices may be issued and public hearings may be requested and held. Citizens can be most effective by gathering facts about wetland or stream resources on the site, submitting specific comments, coordinating with other agencies and groups that may share your position, and continuing to be engaged in the decision making process.

- **After a Permit Is Issued**

This section discusses mitigation of wetland impacts, compliance with permits, enforcement of permit violations, and appeal of an approved permit.

- **Reporting Unpermitted Activities**

This section discusses what to do if you think a project is being conducted in a wetland without a permit.

- **Resources**

This section provides contact information, describes authorities for wetlands protection, and defines key terms.



III. THE PERMITTING PROCESS

Understanding federal and state wetland protection programs and the permitting process will help you identify protection requirements and opportunities for public input. The federal Clean Water Act (Section 404) and Maryland state tidal and nontidal wetland laws are the most important, but other state and federal laws may also apply to a particular project (see Section VII).

Knowing the Laws

The following table summarizes key federal and state wetland laws.

| Law | Goal | What's Covered? |
|--|--|--|
| Federal Clean Water Act (Section 404) (1972) | To restore and maintain the chemical, physical and biological integrity of the nation's waters | Applies to "waters of the United States" (navigable or interstate waters or wetlands, or those affecting interstate or foreign commerce) and regulates discharge of dredged or fill materials into these waters and wetlands. Doesn't specifically address flooding, cutting vegetation, or diverting water. |
| Maryland Tidal Wetlands Act (1970) | To manage tidal wetlands to provide reasonable use while furnishing essential resource protection. | Requires permits or licenses before a person fills, dredges, or otherwise alters a tidal wetland. Typical projects requiring approval include: <ul style="list-style-type: none">• Shoreline protection projects including marsh creation, stone revetments, and bulkheads• Piers;• Dredging; and• Stormwater discharges. |
| Maryland Nontidal Wetlands Act (1989) | To protect nontidal wetlands by regulating and restricting activities that could impact nontidal wetlands or waters of the state. Helps to ensure "no net loss" in wetlands, by requiring mitigation or compensation for any wetland losses. | More stringent than federal law in that it: <ul style="list-style-type: none">• Prohibits placement of fill, soils, trash, and other pollutants in wetlands;• Prohibits drainage, excavation, dredging or other changes to wetland hydrology;• Prohibits activities that would destroy or alter natural vegetation;• Regulates construction on or in wetlands in Maryland;• Regulates isolated wetlands; and• Requires a 25-foot buffer around wetlands (100 feet for Wetlands of Special State Concern). |



Permits

Both federal and state wetland laws require developers to obtain a permit for projects that impact wetlands. In Maryland, there is a single permit application for federal and state approval of impacts to either tidal or nontidal wetlands. MDE coordinates this process with the Corps of Engineers and other federal, state and local agencies. The State Programmatic General Permit (MDSPGP) is the primary general permit used to authorize wetland impacts.

There are two types of wetland permits:

- *General Permits* apply to a wide range of activities with minimal impacts (e.g. most wetland impacts under one acre).
- *Individual Permits* apply when the proposed loss or modification of water or wetlands is not “minimal” or requires expanded public or agency review. MDE and the Corps also have authority to require an individual permit for any proposed activity that would have significant impacts to threatened or endangered species, or cultural or historical resources. Individual permit review allows for the greatest amount of input by federal and state agencies, as well as opportunity for public comment and public hearings.

See “Table A. What Type of Permit is Needed?” for more information.



When is a permit required?

Activities requiring a permit include:

- Removal, excavation, or dredging of soil or other materials
- Changing existing drainage or flood retention
- Disturbing the water level or water table by drainage, impoundment, or other means
- Filling, dumping, discharging of material, driving piles, or placing obstructions
- Grading or removal of material that would alter existing topography
- Destruction or removal of plant life

Activities exempted from regulation including normal farming and forestry practices.

Photo: Maryland Department of Natural Resources



Permits

Table A – What Type of Permit is Needed?

| Permit Category (Maryland State Programmatic General Permit) | Responsible Agency | Activities Covered |
|--|---|---|
| EXEMPT | MDE | <ul style="list-style-type: none"> many agricultural and forestry activities; control of noxious weeds |
| LETTER OF AUTHORIZATION | MDE | <ul style="list-style-type: none"> activities in isolated wetlands < 1 acre with no significant plant or wildlife value activities impacting < 5,000 square feet of wetlands installation of utility lines and repair of structures such as bridges, roadbeds, stormwater facilities, etc. |
| CATEGORY 1 | Processed by MDE Reported to Corps | <ul style="list-style-type: none"> certain agricultural activities scientific measurement and surveys repair and maintenance activities wetland fills associated with development, roads, and other activities fish and wildlife harvest boating and navigation shoreline stabilization return water hazardous waste cleanup |
| CATEGORY 2 | Processed by MDE Authorized by Corps | <ul style="list-style-type: none"> activities in or near federal civil works projects activities grandfathered by MDE activities exempt from state permit requirements Category I projects previously denied authorization Category I projects proposed to resolve a violation |
| CATEGORY 3 | Processed by MDE Coordinated with state and federal resource agencies Authorized by Corps | <ul style="list-style-type: none"> activities not eligible for Category 1 or 2, that will have no more than 1 acre of impacts and <u>do not</u> require state public notice activities not eligible for Category 1 or 2, that will have no more than 1 acre of impacts and <u>do</u> require state public notice |
| INDIVIDUAL PROJECTS (IP) | Joint MDE and Corps evaluations Coordinated with state and federal resource agencies | <ul style="list-style-type: none"> activities not covered by MDSPGP Categories 1, 2 or 3 activities which may result in any of the following: <ul style="list-style-type: none"> significant individual or cumulative impacts impacts to threatened or endangered species impacts to cultural or historical resources impacts identified during the public interest review activities requested by a federal resource agency to be evaluated under an Individual Permit |

Permits



Photo : Lauren Wenzel

Federal and State Agency Roles on Wetland Permits

U.S. Army Corps of Engineers (Corps) – lead federal agency; evaluates, issues and enforces permit requirements.

U.S. Environmental Protection Agency (EPA) - develops guidelines for permitted activities; has veto authority; can take enforcement actions on unpermitted activities or permit violations; provides advisory ecological recommendations to the Corps.

National Marine Fisheries Service - provides advisory ecological recommendations to the Corps on permit applications.

U.S. Fish and Wildlife Service - provides advisory ecological recommendations to the Corps on permit applications.

Maryland Department of the Environment (MDE) – reviews applications; issues and enforces permits for activities that impact wetlands or waters of the State.

Maryland Department of Natural Resources (DNR) - provides ecological review on permit applications, particularly with regard to rare, threatened and endangered species, Wetlands of Special State Concern, and compliance with Critical Area programs.

Permits

Before applying for a permit to impact wetlands or streams, the applicant should have determined the type and extent of wetlands on the property. The permitting process for tidal and nontidal wetlands is generally the same, although additional public notice is required for some tidal wetland projects, and the construction of piers and pilings must meet some additional requirements. During “pre-application” an applicant may seek input from MDE or other agencies regarding the proposed impacts, and can also request a “jurisdictional determination” from the Corps to determine whether wetlands are on the site and whether they fall under the jurisdiction of the Corps or MDE.

The applicant then submits a joint federal/state application form to MDE, which also screens all applications for the Corps and distributes them to other agencies as needed. An application includes:

- the name and address of the applicant and owners of adjacent properties;
- a description of the proposed activity;
- the purpose(s) of the project;
- a discussion of measures to avoid and minimize negative impacts; and
- a map of the proposed project boundaries and planned structures including roadways and wetlands that will be affected by the project.

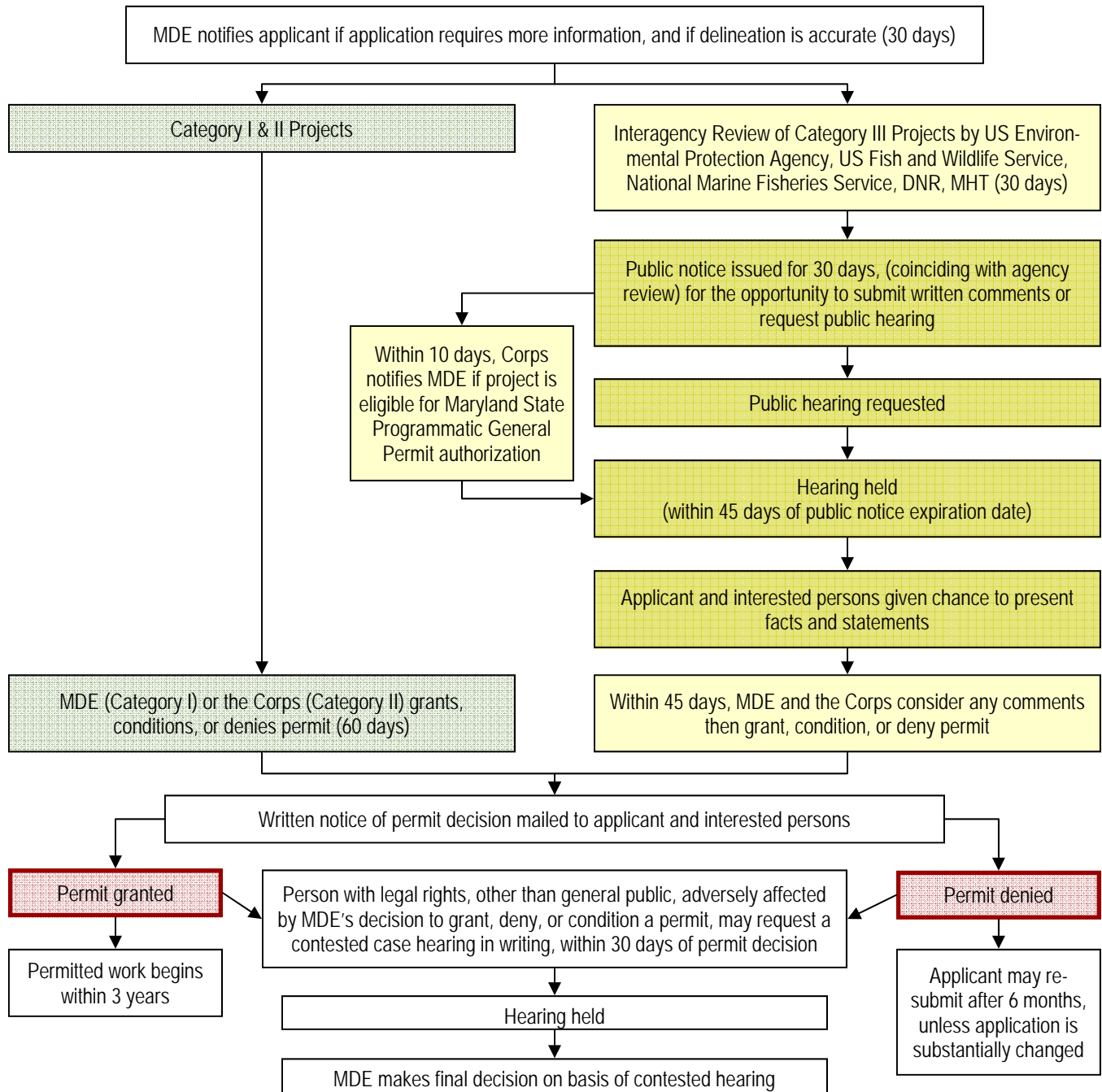
Depending on the proposed activity, the wetland impact, the presence of resources such as threatened or endangered species, and other factors, the proposed project will be reviewed under one of several categories described in Table A (see page 9).

Low impact activities are eligible for a Letter of Authorization, Category I, or Category II permit, and are authorized by MDE and the Corps with little outside input. Category III and Individual Permits provide the most opportunity for agency and public review. Figure 1 outlines the process and timetable for both agency and public review of projects. **Once a permit is approved, the work must begin within three years and be completed in no more than ten years.**



Photo: Maryland Department of Natural Resources

Agency and Public Review of Wetland Permits



IV. HOW TO BE AN EFFECTIVE ADVOCATE FOR WETLANDS

Know Your Site

The first step toward understanding the impacts of a proposed project on wetlands is to know the extent of wetlands and streams on a site. Wetlands are officially identified and mapped on a site through a technical procedure called site delineation. However, on private sites this information may not be publicly available. The following sources may help a citizen determine if wetlands are likely to exist on the property.



Photo: Chesapeake Bay Foundation

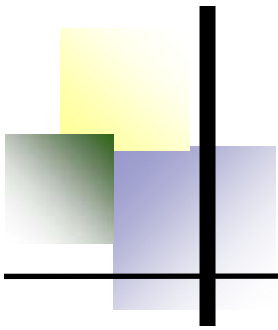
Developers often submit site plans of a proposed project in order to gain local approvals.

These plans normally include the boundary of proposed activities, details of the project, and engineering designs. If the applicant has had the project area surveyed, plans may include contour lines, stream and wetland areas. To review site plans, contact your local Planning and Zoning Office and ask if a site plan for the project has been submitted.

If site plans are not available, or do not detail natural resources, available maps may help you determine whether or not wetlands are present. Local experts in botany, soils, endangered species, or other area resources can also provide valuable information as you seek to determine what exists in a particular area.

While wetland maps are very valuable sources of information, the following points should be remembered when using them:

- **Not all wetlands are mapped.** Many wetlands may be omitted from maps, such as those less than five acres, occurring as thin fringing bands along rivers and streams, or farmed wetlands.
- **Some wetlands are missed.** The maps were prepared by interpreting high altitude photographs with spot field checking. These photographs show the conditions during the specific year and season when they were taken. Some wetlands may be missed or mapped boundaries may be different than if based on detailed field observations.
- **Some of the maps are old.** Conditions may have changed significantly since the aerial photographs were taken, e.g., filling, drainage, beaver activity, roads, etc.



Wetland Maps

Below is information on the most useful map resources for identifying wetlands in Maryland. Contact information for each source is provided in Section VII, "Resources."

- **Digital Orthophoto Quarter Quads**

Digital Orthophoto Quarter Quads (DOQQs) are the most accurate map source for wetlands in Maryland. These aerial photographs show most ground features, including wetlands, and are more recent than most National Wetland Inventory maps. They are created by the Maryland Department of Natural Resources, which also produces guidance maps of Wetlands of Special State Concern (WSSC). See <http://www.msgic.state.md.us/techtool/samples/index.htm>, or order DOQQs through the DNR Geographic Information Services Division.

- **U.S. Fish and Wildlife Service - National Wetlands Inventory (NWI) Maps**

The U.S. Fish and Wildlife Service's national inventory of wetlands can help you find approximate location, extent and type of wetlands in a specific area (see the "user notes" on the map for your area). Information about the National Wetland Inventory, including information on how to order maps and access to an interactive online mapper, can be found on the U.S. Fish and Wildlife Service website at <http://wetlands.fws.gov/>. In Maryland, hard copies of NWI maps can be obtained through the Maryland Geological Survey.

- **U.S. Geological Survey Topographic Maps**

The U.S. Geological Service (USGS) prepares maps that contain a variety of information including landmarks such as towns, roads, bridges and streams. These maps, or "quads," also include details not commonly found on road maps such as contour lines, drainage patterns, and wetlands. However, these maps do not necessarily show all wetlands within an area, and may not be up to date. USGS maps are available through the U.S. Geological Survey website at <http://mcmcweb.er.usgs.gov/>. In Maryland, hard copies of topographic maps can also be obtained through the Maryland Geological Survey.

- **County Soil Maps**

The Soil Conservation District in most counties has soil survey maps that show soil types, as well as general information such as climate, natural resources, geology, land use, and general vegetation types. Soil surveys can help you identify areas of hydric (wet) soils and streams. Like NWI and topographic maps, soil surveys often contain older information, and cannot be used alone to determine wetland presence or extent. Information on soil surveys and other soil resources can be found on the US Department of Agriculture (USDA) National Soil Survey Center website at <http://www.statlab.iastate.edu/soils/nsdaf/>, and at County Soil Conservation Districts.



Becoming an Advocate

The following actions can help you become a more effective advocate for wetlands protection.

- **Become Familiar with the Applicable Laws and Regulations**

In addition to the federal Clean Water Act (Section 404) and the Maryland Tidal and Nontidal Wetland Acts, other federal and state laws may be applicable when a wetland impact is proposed (see Section VII). Additional information on many federal, state and local laws and programs can be found on the MDE website at <http://www.mde.state.md.us/wetlands/1programs.htm>.

- **Collect Useful Information**

Fact gathering is critical to success. Establish a file, including relevant documentation such as newspaper clippings, agency correspondence, and photographs. Your own knowledge or experience can be valuable in evaluating an application. For example, old photographs of the area, and knowledge of the history and duration of flooding, may be particularly helpful.

- **Watch for Public Notices**

Many projects that require a wetland permit also require formal public notice. Information in the notice includes the permit application number, name and address of the applicant, a brief description of the proposed project, the deadline for public comments, the authority under which the permit is being reviewed, and what additional permits or certifications are needed. Public notices are listed in local newspapers or mailed to interested parties. Public notices are posted on MDE's website at: http://www.mde.state.md.us/programs/waterprograms/wetlands_waterways/about_wetlands/public.asp.



Photo: National Oceanic and Atmospheric Administration



Deciding to Act

Not all projects warrant citizen involvement, nor can you get involved in every project. You need to carefully consider the facts, public sentiment, and the project requirements to ensure that your time and energy produce the desired results. While gathering information about a particular site and a proposed activity, consider the following questions before deciding to act. (A more detailed checklist for analyzing the impacts of development projects is provided in CBF's *"Influencing Development in Your Community."*)

- Are significant wetland impacts proposed?
- Will the project jeopardize State or federally listed endangered or threatened species, or wetlands of special state concern?
- Have all appropriate and practicable measures been taken to avoid and minimize potential impacts?
- Are alternative project sites available?



The answers to the above questions may not be apparent from the public notice or the project application, and additional sources of information may be needed. Local, state or federal agencies may have reviewed the proposed project and may have taken an official position or developed comments. If so, this information could be useful to you. Contact local, state or federal agencies to gain information regarding their positions on the proposed project (see Section VII).

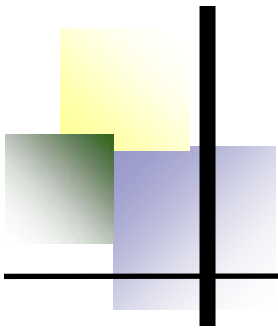
- **Submit public comments.**

The comment period for permit applications is generally between 15 and 30 days. You can provide comments on all aspects of a permit application. Be sure to provide evidence for your comments, and request a specific action (e.g. denial of the permit or specific conditions).

- **Request a public hearing.**

Public hearings provide an additional opportunity to ensure that public comments on the project are considered. Request a hearing by writing to the appropriate agency (the Corps or MDE). If a request is granted, the hearing is usually held within 45 days after the public notice. Hearings are held to assist in decision-making and anyone can participate. Watch for hearing announcements in your local newspaper or on MDE and Corps websites (see Section VII). The time, place, and date of the hearing will be announced several weeks in advance.

When submitting written or oral comments on a project, it is critical to be accurate, clear and concise. Tips on submitting public comments and testifying at public hearings are provided in *"Influencing Development in Your Community."*



V. AFTER A PERMIT IS ISSUED



Written notification of the decision by MDE and the Corps on a wetland permit application is mailed to the applicant and other interested parties who asked to be on the mailing list. If the permit is approved, the work must begin within three years and be completed in no more than ten years. If the permit is denied, the applicant can resubmit after six months as long as it has not been drastically changed.

Appealing an Approved Permit

Unfortunately, in Maryland, a permit cannot be contested by parties other than those “aggrieved” by the permitted action. A person is “aggrieved” if he or she has an interest that is:

- different from the general public (e.g. ownership of property next to the project site), and
- affected by the project.

For example, you may have the right to contest a permit if wetland impacts will cause a loss of your property through flooding. You must be able to show that the permitting decision was:

- arbitrary (i.e., there is no rational basis for the decision);
- unsupported by the evidence; and/or
- violates the relevant law.

If you are contemplating legal action, consult an attorney.

Monitoring Existing Projects

Once a permit has been issued, you can take steps to ensure that activities are conducted in accordance with the permit conditions. The permit may include conditions, such as time of year restrictions, sediment and erosion control measures, or other measures to minimize environmental impacts. MDE and the Corps have authority to monitor permitted activities for compliance with the conditions of the permit. However, enforcement resources are limited, and it is impossible for either agency to monitor every development site all the time.

You have the right to make sure that environmental protections are in place. If you suspect a violation of permit conditions, report this to MDE, the Corps or the EPA. If any of these agencies determines that a violation of a permit condition has occurred, they each have authority to initiate enforcement action and/or to assess administrative penalties. Follow up with agencies to learn about the resolution of the case. Tips on getting access to a site are provided in *“Influencing Development in Your Community.”*



VI. REPORTING UNPERMITTED ACTIVITIES

If you suspect that a project is being conducted in wetlands without a permit, report the activity to MDE and the Corps. MDE and/or the Corps can determine whether a permit is required, but you should follow up because enforcement resources are limited. If a permit is required, MDE or the Corps can issue an administrative order, often called a “cease and desist” order, to halt all activity by the violator. The developer may be required to take corrective action to minimize harm to the environment until the issue is resolved through an enforcement action or issuance of an after-the-fact permit.



Photo: Tom Darden



VII. RESOURCES

Wetland Contacts

Maryland Department of the Environment
Montgomery Park Business Center, Suite 430
1800 Washington Boulevard
Baltimore, MD 21230
Phone: 410/537-3000
www.mde.state.md.us

Nontidal Wetlands & Waterways Program
Phone: 410/537-3768

Tidal Wetlands Division
Phone: 410/537-3837

Regulatory Services Coordination Office
Phone: 410/537-3762

Compliance Program
Phone: 410/537-3510

Maryland Department of Natural Resources (DNR)
580 Taylor Avenue
Annapolis, MD 21401
Toll-Free: 877/620-8DNR (8367)
www.dnr.state.md.us

Wildlife and Heritage Program
Phone: 410/260-8540

Forest Service
Phone: 410/260-8531

Shore Erosion Control Program
Phone: 410/ 260-8531

Geographic Information Services Division
Phone: 410/260-8751

Coastal Zone Management Program
Phone: 410/260-8984

Maryland Geological Survey
2300 St. Paul Street
Baltimore, MD 21218
Phone: 410/554-5500

Maryland State Highway Administration
Environmental Design Division
707 N. Calvert Street, Suite 310
Baltimore, MD 21202
Phone: 410/545-8640
Toll-Free: 800/446-5962
www.sha.state.md.us

Regulatory Branch
US Army Corps of Engineers, Baltimore District
10 South Howard Street
Baltimore, MD 21201
Phone: 410/962-7608
www.nab.usace.army.mil/Regulatory

Wetlands Protection Section
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103
Phone: 215/814-2730
www.epa.gov/reg3wapd

Wetlands Division
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Toll-Free Wetlands Protection Hotline: 800/832-7828
wetlands.helpline@epa.gov

Chesapeake Bay Field Office
U.S Fish and Wildlife Service (USFWS)
177 Admiral Cochrane Drive
Annapolis, MD 21401-7307
Phone: 410/573-4500
www.fws.gov/r5cbfo/



Resources

Maryland Soil Conservation Districts (SCDs)

Allegany County
11602 Bedford Road, NE
Cumberland, MD 21502
301/777-1747, ext. 4

Anne Arundel County
2662 Riva Road
Annapolis, MD 21401
410/222-7822

Baltimore County
9811 Van Burn Lane
Cockeysville, MD 21030
410/666-1188, ext. 3

Calvert County
65 Duke Street
P.O. Box 657
Prince Frederick, MD 20678
410/535-1521, ext. 3

Caroline County
640 Legion Rd., Suite 3
Denton, MD 21629
410/479-1202, ext. 3

Carroll County
1004 Littlestown Pike
Westminster, MD 21157
410/848-8200, ext. 4

Cecil County
101 Chesapeake Blvd.
Suite A-3 Elkton, MD 21921
410/398-4411, ext. 3

Charles County
101 Catalapa Drive
La Plata, MD 20646
301/934-9588, ext. 3

Dorchester County
501 Court Lane
Cambridge, MD 21613
410/228-5640, ext. 3

Frederick County
92 Thomas Johnson Drive
Fleet 230 North Amber
Frederick, MD 21702
301/695-2803, ext. 3

Garrett County
230 South Fourth Street
Oakland, MD 21550
301/334-6950, ext. 3

Harford County
1208 Churchville Road
Bel Air, MD 21014
410/838-6181, ext. 3

Howard County
9025 Chevrolet Dr.
Ellicott City, MD 21042
410/489-7987

Kent County
122-4 Speer Road
Chestertown, MD 21620
410/778-5150, ext. 3

Montgomery County
18410 Muncaster Road
Derwood, MD 20855
301/590-2855

Prince George's County
14741 Gov. Oden Bowie Dr.
Upper Marlboro, MD 20772
301/574-5162, ext. 3

Queen Anne's County
505 Railroad Ave. Suite 3
Centerville, MD 21617
410/758-3136, ext. 3

St. Mary's County
P.O. Box 810
Leonardtown, MD 20650
301/475-8402

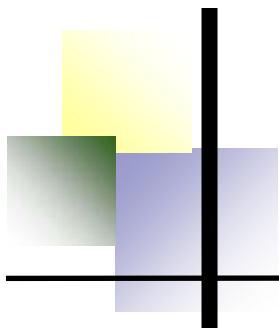
Somerset County
30730 Park Drive
Princess Anne, MD 21853
410/651-0390, ext. 3

Talbot County
215 Bay Street
Easton, MD 21601
410/822-1344, ext. 3

Washington County
1260 Maryland Ave.
Hagerstown, MD 21740
301/797-6821, ext. 3

Wicomico County
2322 B Goddard Pkwy
Salisbury, MD 21801
410/546-4777, ext. 3

Worcester County
2200 Bank Street
P.O. Box 97
Snow Hill, MD 21863
410/632-5439, ext. 3



Resources

Other Laws that Protect Wetlands

Water Quality Certification

MDE is responsible for issuing water quality certification (WQC) for proposed discharges into wetlands and waters of the State, under Section 401 of the federal Clean Water Act. The WQC certifies that a proposed discharge will not violate the State's water quality standards (contained in COMAR 26.08.02). The WQC must be issued for all Corps wetlands permit actions and for Corps' planning and navigation projects that include a discharge. MDE manages and regulates the waters of the State to protect water contact recreation; fish and wildlife; shellfish harvesting; and public, agricultural and industrial water supplies.

Generally, application for the WQC is part of the standard joint permit application. However, for proposed Section 404 activities that do not require a State permit (i.e. federal action in tidal areas), the State issues an individual WQC based upon a request from the federal agency.

Endangered Species

The federal Endangered Species Act prohibits the "taking" of endangered or threatened animal species. "Taking" is broadly interpreted to include killing, harassing, or harming a protected species. "Harm" includes impacting a species' habitat in a way that would impair breeding, feeding, or shelter, and would result in injury to the species. The US Fish and Wildlife Service (FWS) is the primary agency responsible for threatened and endangered species.

Under Section 7 of the Act, federal agencies must ensure that their actions (including permits) do not jeopardize the continued existence of an endangered or threatened species or adversely modify or destroy any of their habitats. These requirements apply to all activities carried out, funded, or regulated by a federal agency, including activities in wetlands.

DNR's Wildlife and Heritage Office administers Maryland's Nongame and Endangered Species Act, which protects State-listed species. Maryland regulations (08.03.08 and 08.02.12) contain official State lists of endangered and threatened species, including game and commercial fish species.

In Maryland, wetlands with rare, threatened or endangered species, and wetlands with unique habitat values receive special attention. Maryland regulations (COMAR 26.23.06. 01 and 02) identify these Wetlands of Special State Concern (WSSC) and provide them with additional protection, including a 100-foot buffer from development. DNR uses this WSSC data for permit application reviews, management plans and other uses.



Resources

Coastal Zone Consistency

Section 307 of the federal Coastal Zone Management Act requires that proposed federal activities in a state's coastal zone be consistent with a state's Coastal Zone Management Program (CZMP). Maryland's CZMP has specific objectives related to wetlands: protection of significant resource value (such as endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds) and maintenance of natural buffers along coastal waters to minimize development impacts. Federal actions and permits (including Corps Section 404 permits) must comply with Coastal Zone Consistency requirements. DNR's Coastal Zone Management Program oversees the State's CZMP.

For activities impacting wetlands, the Coastal Zone Consistency determination is issued as part of the State's wetlands permit. For federal activities that do not require a State permit, the decision is made through MDE's Wetlands and Waterways Program, with input from other State and local agencies.

Federal Fish and Wildlife Coordination Act

Federal agencies proposing water-modifying activities for which federal permits are required (including Section 404 permits) must consult with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as well as state agencies with jurisdiction over wildlife resources. This evaluation is designed to assess the status of affected fish and wildlife resources and to prevent or mitigate their loss and damage.

Maryland Critical Area Law

In Maryland, the Critical Area Law regulates activities within 1,000 feet of the shoreline of the Chesapeake and Coastal Bays and their tributaries. Under the law, administered by the Critical Area Commission (DNR) and local governments, local jurisdictions are required to develop and enforce programs to minimize impacts to Critical Area wetlands. Some local jurisdictions chose to regulate activities in wetlands in the Critical Area through low-density zoning, 100-foot stream and tidal wetland buffers, or overlap with other habitat protection areas. See *"The Critical Area Program and its Role in the Development Process,"* on www.cbf.org.

Maryland Sediment Control Law

The Sediment Control Law requires that local governments adopt erosion and sediment control ordinances to control runoff from construction sites. State law requires an approved erosion and sediment control plan for the following activities: land clearing, grading, or earth disturbance involving more than 100 cubic yards or 5,000 square feet of grading. State and federal projects, agricultural projects, or single-family homes on lots of 2 acres or more (provided the earth disturbance is less than 0.5 acres) are exempted from the requirement to have a sediment control plan. Plans are approved by soil conservation districts, and the State may delegate enforcement authority to local government.



VIII. GLOSSARY

Delineation: Identification of the boundaries of a wetland.

“Grandfathering”: Activities not subject to current regulations because development activity was initiated prior to the law or regulation.

Hydric Soil: Soil that is saturated or flooded long enough to develop anaerobic conditions.

Jurisdictional Determination: The final determination of whether an area is a wetland and whether an activity would require a permit. This decision is made by the Corps of Engineers and is valid for five years.

Letter of Authorization: Authorizes wetland impacts for activities in isolated wetlands <1 acre with no significant plant or wildlife value, activities impacting <5,000 square feet of wetlands, or installations or utility lines or repair of structures such as bridges or roadbeds.

Mitigation: The process of replacing wetland acreage and function lost to development. The regulatory definition of mitigation includes sequencing: first avoiding and minimizing impacts, followed by compensating for destroyed wetlands.

Nontidal Wetlands: Wetlands not influenced by the tides; water is derived from precipitation, surface or groundwater.

Tidal Wetlands: Wetlands influenced by the tides.

Wetlands: (1) Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year. (US Fish and Wildlife Service)

(2) Wetlands are those 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. Wetlands generally include swamps, marshes, bogs, and similar areas. (US Army Corps of Engineers and US Environmental Protection Agency)

Wetlands of Special State Concern: Wetlands specifically named in State regulation, based on certain criteria, such as having exceptional ecological significance.

Definitions adapted from *Wetlands* (Mitsch & Gosselink) and *Classification of Wetlands & Deepwater Habitats of the United States* (Cowardin, et. al)



CHESAPEAKE BAY FOUNDATION

Save the Bay

Founded in 1967, the Chesapeake Bay Foundation is the largest nonprofit conservation organization working solely to Save the Bay. CBF's mission is to restore and sustain the Chesapeake Bay's ecosystem by substantially improving the water quality and productivity of the watershed, with respect to water clarity, resilience of the system, and diversity and abundance of living resources, and to maintain a high quality of life for the people of the Chesapeake Bay region.

The Chesapeake Bay Foundation is a charitable, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

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