



Maryland

Department of the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

August 1, 2016

Announcement/Public Notice:

The Maryland Department of the Environment (MDE) intends to revise regulations in COMAR Title 26 Subtitle 23, Nontidal Wetlands in 2017. Revisions will be proposed to:

- 1) Improve consistency with federal requirements listed in the Code of Federal Regulations 33 CFR Parts 325 and 332 for the Department of the Army and 40 CFR Part 230 for the U.S. Environmental Protection Agency for Compensatory Mitigation for Losses of Aquatic Resources;
- 2) Achieve consistency with statutory amendments to §§5-901 and 5-910, Environment Article, Annotated Code of Maryland; adopted in 2016 for Nontidal Wetlands – Nontidal Wetland Mitigation Banking to remove disincentives to mitigation banking;
- 3) Align MDE's regulatory authority to implement in-lieu fee and mitigation banking programs to be consistent with federal requirements;
- 4) Enable MDE to continue to require and oversee compensatory mitigation on behalf of the U.S. Army Corps of Engineers through a State Programmatic General Permit; and
- 5) Increase the likelihood that compensatory mitigation requirements will be successfully completed in a timely manner.

Revisions will likely include content and format changes. Major topics for which revisions are needed to improve consistency with federal and statutory requirements include:

- Order of preference for mitigation options
- Replacement of lost wetland acreage and function, including ratios for replacement
- Mitigation banking
- Use of an in-lieu fee program to meet federal requirements, which includes addressing the adequacy of existing in-lieu fee rates
- Timing for submittal of mitigation plans
- Timing for completion of mitigation projects
- Timing for receipt, amount, and duration of bonds
- Performance monitoring

MDE is initiating an outreach effort to obtain input from key stakeholder groups and the general public on potential regulatory changes to the non-tidal wetlands mitigation regulations in advance of MDE proposing such amendments to its existing regulations. MDE plans to sponsor a series of separate stakeholder-specific meetings in the summer and fall of 2016 to enable dialogue between MDE and key stakeholder groups about regulatory revisions and options for changes to improve the non-tidal wetland mitigation regulations. MDE intends to meet separately with invited

representatives of various key stakeholder groups including: (1) environmental/public interest groups, (2) agriculture interest groups, (3) development interest groups, (4) mitigation bankers/consultants, (5) counties, and (6) the Interagency Review Team. MDE intends to issue invitations to specific representatives of these various stakeholder groups, and, to make available, on a first come, first served basis a limited number of spaces for others who may be interested in attending a specific stakeholder session appropriate to their background. For example, MDE expects to invite representatives of the Homebuilders Association and other groups representing the development sector to the stakeholder session for development interest groups. Others in the development community who may be interested in attending this session would be able to express their interest in attending the development stakeholder group and MDE would attempt to accommodate such requests, on a first come, first served basis. MDE will, over the next several weeks, create and post the schedule for the individual stakeholder sessions and issue invitations. At that time, other interested parties will be able to notify MDE of their interest in attending a particular stakeholder session and MDE will attempt to accommodate such requests, on a first come, first served basis.

In addition, MDE has also scheduled general public meetings to present and discuss these issues on the dates and locations listed below:

Eastern Shore: October 6, 2016 at 1:00

Cambridge Library, 303 Gay Street, Cambridge, Maryland 21613 – *Please do not park in library parking lot, but use street parking or public city parking lot.*

Central Maryland: October 11, 2016 at 1:30

Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230.

Western Maryland: October 4, 2016 at 1:00

Hagerstown Library, 100 South Potomac Street, Hagerstown, MD 21740.

Additional information about the proposed revisions is available on MDE's website at www.mde.maryland.gov/wetlands

For more information, please contact Kelly Neff at 410-537-4018 or kelly.neff@maryland.gov.

Please RSVP through email if you would like to attend one of the already scheduled general public meetings.