

### 3.18 TIDAL WETLAND LICENSES AND PERMITS

- ❑ *Question: Does the tide rise and fall at the site where you propose your project? If so, does your project involve constructing a shore erosion control measure such as a bulkhead, stone revetment, breakwaters, living shoreline, groins, or jetties? **OR** does your project involve constructing a pier, a platform, mooring piles, finger piers, installing a boat lift or PWC lift, a floating PWC/boat lift, or a boat ramp? **OR** does your project involve dredging any open water or marsh?*

#### Why do I need this approval?

Tidal wetlands, which fringe many of the shorelines of the Chesapeake Bay and its tidal tributaries, as well as the Coastal Bays, include marshes, shrub swamps, forested wetlands, submerged aquatic vegetation and open waters. Each type of wetland plays a vital role in the health of the Chesapeake and Coastal Bay estuaries. Roles of tidal wetlands include fish and wildlife habitat, water quality enhancement, natural shoreline protection, flood protection, recreational opportunities, and aesthetics. The goal of the tidal wetlands program is to manage tidal wetlands to provide reasonable use while furnishing essential resource protection. To accomplish this goal, the following activities are regulated by the Department:

- Filling of open water and vegetated wetlands
- Construction of piers and associated structures
- Construction of shore erosion control structures
- Dredging
- Marsh establishment (living shoreline)

#### What laws or regulations give MDE the legal authority to issue this approval?

STATE: Environment Article Title 16

(<http://mgaleg.maryland.gov/webmga/fmStatutesText.aspx?tab=home>);

Annotated Code of Maryland; COMAR 26.24.

([www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=26.24.\\*](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=26.24.*))

#### What is the process to get this approval?

1) Complete a *"Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland"* application.

2) Mail the *original* plus six (6) copies of the application, plans, vicinity maps, and any supporting documentation to:  
Maryland Department of the Environment  
Regulatory Services Coordination Office (RSC)  
Water & Science Administration  
1800 Washington Boulevard, Suite 430  
Baltimore, Maryland 21230-1708

3) Upon receipt of the application package, the RSC will determine what type of authorization is necessary and will forward the application to the appropriate governmental agencies. The RSC receives applications for the Nontidal Wetlands Division, Tidal Wetlands Division, Waterway Construction Division, and the Dam Safety Division of the Maryland Department of the Environment, as well as the U.S. Army Corps of Engineers. The Department conducts the application review in cooperation with local, State and

federal agencies. Although the Department often coordinates with local governments on specific applications, it is the applicant's responsibility to obtain all local approvals for the project.

4) Depending on the nature of the project, it may be advertised for comment and an opportunity for a public informational hearing. The applicant may be required to notify adjacent property owners.

5) The Department, in a majority of instances, will perform a site evaluation.

6) At the conclusion of the review process, the Department will make a decision on the application. Upon receipt of final construction plans, a Permit or License is issued by the Department or, in some instances, a license may be issued by the Maryland Board of Public Works (BPW) based on a recommendation from the Department.

#### WATER QUALITY CERTIFICATION

A State Water Quality Certification (WQC), which insures the protection of waters of the State, is necessary for activities requiring a U.S. Army Corps of Engineers Section 404 permit. In general, when an activity is authorized by the MDSPGP and MDE issues a Permit or General Wetlands License or the Board of Public Works issues a Wetlands License then the WQC is incorporated into that authorization. When an activity cannot be authorized by the MDSPGP and MDE issues a Permit or General Wetlands License or the Board of Public Works issues a Wetlands License or the activity is exempt from the requirement to obtain an authorization from MDE then an individual WQC must be issued by the Department.

#### Is this approval directly related wq'br contingent on other approvals?

Chesapeake Bay Critical Area Protection Program; Erosion/Sediment Control and Stormwater Management Plan approvals (3.21); and  
Local building permits.

#### Are there any other requirements?

Applicants are required to demonstrate that proposed impacts to tidal wetlands are necessary and unavoidable. The application review process first eliminates then reduces impacts through avoidance and minimization. An alternatives analysis may be required as part of this process. Mitigation may be required for authorized

impacts. Wetland mitigation monitoring may be required and may extend beyond construction of an approved mitigation project.

**How long should I expect it to take to get this approval once I submit a complete application?**

| Type of Project * | Turnaround Time |
|-------------------|-----------------|
| Minor             | 90 days         |
| Major             | 240-325 days    |

**\* Major Projects are:**

1. A project that proposes to impact 5,000 square feet or more of tidal wetlands.
2. A project that requires public notice.

**\* Minor Projects are:**

1. Projects proposing to impact less than 5,000 square feet of tidal wetlands.
2. A project that proposes residential activities.

**What type of approval will I receive?**

It depends on the type of project. A minor project will receive a State authorization from the Department. A major project requires the Department to issue a Report and Recommendation to the BPW who will then vote to approve issuance of a Wetland License authorizing the activity.

| Type of License         | Type of Wetland  |
|-------------------------|------------------|
| General License (minor) | State Wetlands   |
| General Permit (minor)  | Private Wetlands |
| Wetland Permit (major)  | Private Wetlands |
| Wetland License (major) | State Wetlands   |

Depending on the parameters of the project, you will either receive the required federal authorization from the Department or receive the federal authorization directly from the US Army Corps of Engineers (USACE). If the project is categorized as an A under the Maryland State Programmatic General Permit (MDSPGP) then the Department will issue the federal authorization with the State authorization. If the project is categorized as a B or an ALT under the MDSPGP then the USACE will issue the federal authorization directly to the applicant.

**What is the MDSPGP?**

The MDSPGP is a federal permit issued by the USACE on behalf of the citizens of Maryland. Every five years the State and the USACE review the activity parameters that

encompass the different categories (A, B, and ALT), make necessary changes and renew the MDSPGP.

**Once I get the State approval, how long will it last?**

An authorization issued by the Department (General License, General Permit, Wetland Permit) is valid a maximum of three years from date of issuance and cannot be renewed or extended. An authorization issued by the BPW (Wetland License) is valid a maximum of three years from the date of issuance, but can be extended for an additional three years under certain circumstances.

**Is there a fee?**

Yes, refer to our website for more information.

<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Documents/FeeSchedule.pdf>

**Do I need to know any additional information?**

Contact the Department at (410) 537-3571 for technical assistance and guidance on the preparation of a complete application. For permit application status, call (410) 537-3762 or 1-800-633-6101.

**Who do I contact with additional questions?**

Jonathan Stewart, Chief

Tidal Wetlands Division

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Wetlands and Waterways Protection Program

Maryland Department of the Environment

(410) 537-3059