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Tier II Review Applicant Training

for Land Disturbing Activities

Angel Valdez
Antidegradation Policy Implementation Coordinator
Water and Science Administration
Maryland Department of the Environment

Outline

- Introduction
- Tier II review documentation
- Mitigation guidance
- Basic review workflow and example
- Complex review workflow and example
- Tier II notices & resources



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Section One: Introduction



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Antidegradation Regulation: COMAR 26.08.02.04-2 (est. 2004)

- Defines how to designate Tier II waters
- Defines when an Antidegradation Tier II Review is required
- Defines when there is no assimilative capacity, e.g., Tier II conditions are not maintained
- Lays out the social and economic justification procedure when approval is granted, and water quality will be lowered



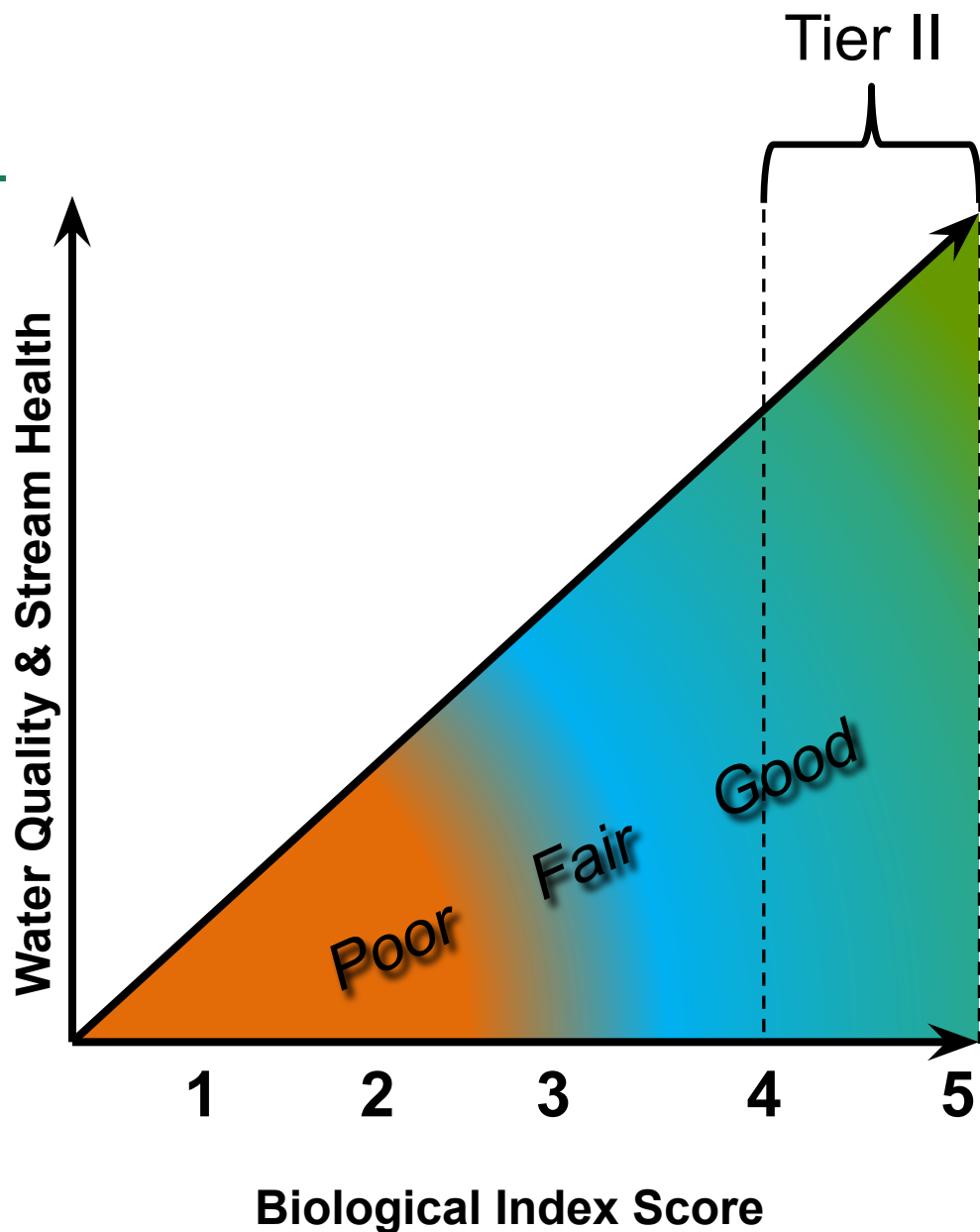
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Tier II Waters: Designation

- Streams are sampled using the Maryland Biological Stream Survey (MBSS) protocols
- MBSS assigns scores for stream benthic (bug) and fish assemblages
- To be designated Tier II, both scores must be ≥ 4.00



Assimilative Capacity

- Assimilative Capacity is a quantitative way to determine if a designated Tier II stream is still of high quality, or if it has degraded
- An assimilative capacity threshold IBI score accounts for natural variability
- One threshold is developed for fish while a second is developed for benthic invertebrates
- If new data indicates that either the fish or benthic score falls below their perspective thresholds, the stream has no AC
- Streams with no remaining AC are still Tier II streams



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Assimilative Capacity

Currently, 139, or 53% of all Tier II streams have no remaining assimilative capacity



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Processes Screened for Tier II Review

- Water and Sewer Plan Amendments
- State Clearinghouse
- New NPDES permits or major modifications of an existing discharge permits
 - WWTP
 - General Permit for Stormwater Associated w/Construction Activity 20-CP (NOI)
- Nontidal Wetlands and Waterways Construction Permits or Authorizations
- Surface Mining Permits
- Power Plant Research Program (solar, powerlines, other energy projects)



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Section Two: Tier II Review Documentation





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Preliminary Tier II Report

	Maryland Department of the Environment Antidegradation Review Report Form Preliminary Tier II Report	
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Directions: Type answers directly into the form in the color REQ

Date:

Primary contact name:

email:

Project name and application number (if available):

1. Project Overview:

a. Project location

i. Tier II watershed impacted:

(Link to interactive map: <https://mdewin84.mde.state.md.us/WSA/TierIIWQ/index.html>)

ii. Does the Tier II watershed have assimilative capacity?

iii. Address or closest intersection if no address exists:

iv. Coordinates in decimal degrees: Latitude Longitude

v. Tax map and parcel number(s):

vi. Project description (road, warehouse, infrastructure, etc.):

vii. *Attach project site plans*

b. Project Footprint

i. Project Footprint, in acres:

ii. Disturbed area, in acres:

2. Project Purpose:

a. Provide a brief description of the property purpose:

b. Does the project meet a unique need, have special funding, or location, such as being located within a Priority Funding Area? Attach map of site relative to PFA.

3. Impervious Surface:

a. Will the project increase impervious surface?

b. If 3a is yes,

i. How much is the increase in acres?

ii. How many acres will be treated with Environmental site design?

iii. How many acres will be treated with traditional structural practices?

4. Stream Resources:

a. Will the project directly impact streams?

b. If 3a is yes,

i. Approximate left bank impacts in linear feet

ii. Approximate right bank impacts in linear feet

c. Will the project impact the 100-foot Tier II stream buffer?

1. Project overview
2. Project purpose
3. Impervious surface information
4. Stream resource information



Preliminary Tier II Report (cont.)

i. If 3c is yes, approximate impacts in acres.

5. Forest Cover:

- a. Is forest clearing a part of the planned activity?
- b. If 5a is yes, provide an estimate in acres of net forest loss

6. Phasing:

- a. Is this project one phase of an ongoing project?
- b. If 6a is yes,
 - i. Which phase is the project?
 - ii. Does this portion of the project serve a special purpose to the overall project, such as sewer infrastructure?

7. Permitting:

- a. Does this project require a nontidal waterways or waterways construction permit or authorization?
- b. If 7a is yes, have you submitted the application?
- c. If 7b is yes, what is your assigned application number and permit reviewer?
- d. Has this project previously received a nontidal wetlands or waterways construction permit or authorization?
- e. If 7d is yes, please provide a copy of the permit or authorization.

8. To exempt the project from the 'no-discharge alternatives analysis' you must demonstrate that there is no alternative location available. To qualify for an exemption from this analysis, one or more of the following conditions must apply:

- a. The project is linked to a unique or special State, County, or Municipality development incentive. For documentation, provide a map of the project's location relative to the Priority Funding Area, etc.
- b. The project has location specific limitations as it is part of an on-going, phased development, existing structure, or connects to existing infrastructure. Documentation is whatever plans you are using to guide the work.
- c. The project has little to no resource impacts. This project will not cause significant stream impacts, stream buffer impacts, forest cover loss, or addition of impervious surfaces. To qualify, all impacts must be under 1 acre, or the project purpose is repair, in-kind replacement, restoration, stabilization, or rehabilitation. Documentation is whatever plans you are using to guide the work.
- d. The project is a military project (or similar) with site restrictions due to national security, etc.
- e. The project is a 'grandfathered' development that meets the specification within Chapter 1.2, in the Maryland Model Stormwater Management Ordinance, June 2007 & April 2010. Documentation should consist of administrative waivers, extension approval, etc.

9. Explain all actions taken to minimize environmental impacts.

5. Forest cover
information

6. Project phasing
information

7. Permitting
information

8. Exemption
information

9. Minimization
activities

Applicant BMP Checklist



MDE Tier II Supplementary BMPs for Sediment and Erosion Control	
<p>Applicants must utilize enhanced BMPs or additional controls, potentially above those minimally required in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control, to protect high quality Tier II stream resources.</p> <p>Incorporate all applicable items, check off practices incorporated, and identify the practice locations in plans. Some practices may be marked N/A (e.g. no sediment traps are used). The list below is not exhaustive, and you may summarize additional information related to avoidance and minimization in Tier II watersheds by attaching additional pages.</p>	
Grading and Stabilization	Plan Sheet Locations
Locate stockpiles > 100 ft from stream resources	
Permanent mulch application depth shall not exceed 6". Temporary mulch spreading and matting to minimize compaction is allowable.	
Filtering	Plan Sheet Locations
Near streams upgrade silt fencing to super silt fencing or an equivalent measure (for example large compostable filter logs)	
Sediment Trapping (traps/basins)	Plan Sheet Locations
For road adjacent work <u>include</u> : Trash rack, oil/water separator, and/or skimmers	
Forebays or designs to maximize detention time (for example includes baffle boards)	
Flocculants or other chemical additives (may require additional approvals or conditions for use)	
Dewatering	Plan Sheet Locations
<ul style="list-style-type: none"> Discharges take place beyond the existing stable vegetated buffer of 100 ft and/or Discharges within the buffer occur through Agency approved <u>secondary or redundant control</u> (for example sediment bag treated with sediment filtration aid) 	
Erosion and Sediment Control Plan Tier II Notes	
<ul style="list-style-type: none"> To the maximum extent practicable activities should take place during times when sediment transport <u>are</u> likely to be lower as predicted by National Oceanic and Atmospheric Administration 1 or 3 clear day weather forecast. Conduct inspections daily. Logbooks may be reviewed. Signage and flagging will be used within the Tier II stream buffer zone. Text: Tier II Waters: High Quality Waters Erosion & Sediment Control Measures Strictly Enforced & Monitored. See next page for details. Temporary access bridges shall be utilized over fords. Vehicles operating within the stream buffer must carry oil/gas/grease clean up kits for spill accidents. 	

This form is required when the project is classified as basic and MDE has determined that at this time no additional review is required.

This form demonstrates that the applicant has taken some actions to minimize impacts to the Tier II watershed.



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No Discharge Alternatives Analysis Form

Qualifying Exemptions

For the purposes of the no discharge analysis for land disturbing activities, extenuating circumstances may apply to projects that are developed to address a specific need, may be linked to special funding, or linked to a specific location. Supporting documentation is required before consideration. Please read the following examples and determine whether or not a given situation is applicable.

The applicant must get concurrence from MDE as to the applicability of any special circumstances prior to completing the no discharge alternatives analysis. It is at the Department's discretion to determine whether a special circumstance applies, and whether or not this applicability means that there is not a reasonable alternative that avoids the Tier II watershed.

If none of the special circumstances apply, check "Not Applicable".

☐ Not Applicable

☐ Situation 1: Project is linked to unique or special incentives for State, County, or Municipality

Example: County needs for 1000 units of low-income senior housing in legislative district 7. Documentation must include the request for proposals (RFP) or similar missive to meet the housing need, and unique benefits or incentives lost if the project is moved outside of legislative district 7.

Example: Project is located in a State Designated Priority Funding Area, State Designated Enterprise Zone, or similar area targeted by the State for economic growth, business development, or investment.

☐ Situation 2: Project has location specific limitations

Example: College campus extension. Education capital funding limits development to sites that are within 5 miles of the main campus. Documentation should include the RFP or similar documentation.

Example: Project is taking place in an existing right of way or using an area that is currently operational. Such projects include replacing transmission lines, expanding operations on a working farm or business center.

☐ Situation 3: Military project (or similar) with restrictions due to national security, etc.

Example: Construct a new runway and hangar for Air Force 1. The military may identify a certain location or base where this construction shall occur due to existing facilities, support personnel, and security concerns.

☐ Situation 4: Project has little to no resource impacts.

Example: Repair or replacement of existing structures, road resurfacing, bridge maintenance using scaffolding, General Waterways Construction Permits, habitat restoration, rehabilitation, and stabilization.

☐ Situation 5: Project is a "Grandfathered" development, that meets the specifications within Chapter 1.2, in the Maryland Model Stormwater Management Ordinance, June 2009 & April 2010

Administrative waivers, extension documentation, etc. are required documentation.

Note -This exemption does not apply to linear projects like roads or pipelines. Grandfathered projects are not exempt from the minimization alternatives analysis.

- Provides a list of qualifying exemptions
- If not exempt, applicants must complete an alternative site or route search
- Provides a summary of search analysis and feasibility



Minimization Alternatives Analysis Form

A. Tier II Stream Buffers

1. Instructions:

- If no vegetated stream buffer impacts are proposed (within 100' of stream), mark this section N/A and proceed to Section B, Forest Cover.
- Complete the analysis for each Tier II watershed affected on a separate sheet
- Insert the Tier II watershed name at the top of each box.
- "Impacted" stream segments are those disrupted by road crossings, other infrastructure, construction (ex. sewer lines), or otherwise buried
- Calculate buffer averages for A(3) below on a stream segment-by-segment basis.

A. Tier II Stream Buffers - Tier II Watershed: _____

2. Calculation of Potential Impacts to State Regulated Waters - Linear Feet

Linear Feet +/-

Left Bank Right Bank

a. Combined length of on-site stream segments:

b. Combined length of PROPOSED, post-development, impacted stream segments due to the project:

c. Unimpacted stream impacts (lf) = $2(a)-2(b)$

3. Calculation of Potential Tier II Riparian Buffer Impacts to State Regulated Waters - Square Feet

Square Feet

Left Bank Right Bank

a. Area of on-site stream buffer (i.e. within LOD, count buffer within 100' of stream):

b. Area of PROPOSED impacts to on-site stream buffer, post-development:

c. Unimpacted buffer impacts (sqft) = $3(a)-3(b)$

A. Tier II Stream Buffers - Tier II Watershed: _____

4. Buffer Impact Minimization:

Evaluate on-site alternatives to avoid buffer impacts for segments identified in 3(b). Examples include minimizing ROW, narrowing paths, etc. Discuss alternatives in the Tier II Report.

5. Buffer Exhibit Minimization:

Prepare a Tier II Buffer Exhibit for on-site streams. Depending upon the number of segments, multiple sheets (8 1/2" by 11") may be used. Include:

- An overview, labeling each segment (a, b, c...)
- A tabular summary of average buffer width, linear feet impacted, and acres on each page.
- The 100-foot riparian buffer
- Areas where the post-construction stream buffer are +/- 100 feet.
- On-site areas where buffers could be maintained at distance greater than or equal to a 100'

- Calculates impacts
 - Stream impacts (lf)
 - Buffer impacts (sq ft)
 - Forest Cover (acres)
 - Impervious Cover (acres)
- Evaluation of minimization alternatives
- Justification that minimization alternatives have been maximized
- BMPs and Tier II notes for plans (the checklist)



Mitigation Alternatives Analysis Form

A. Tier II Stream Mitigation		
1. Instructions:		
a. If no stream or stream buffer impacts are proposed mark this section N/A and proceed to Section B, Forest Cover, otherwise		
b. <u>Complete the analysis for each Tier II watershed affected on a separate sheet</u>		

A. Tier II Stream and Buffer Impacts- Tier II Watershed Name: _____		
2. Summary Tier II Stream Impacts (Linear Feet, from MDE Tier II Alternatives Analysis – Minimization Alternatives V 2.0, A(2(c)))	Left Bank	Right Bank
	16	14
3. Summary Tier II Stream Buffer Impacts (Square Feet, from MDE Tier II Alternatives Analysis – Minimization Alternatives V 2.0, A(3(c)))	Sq ft	Sq ft

A. Tier II Stream and Stream Buffers - Tier II Watershed: _____	
4. Stream Impact Mitigation:	
Acceptable stream mitigation shall be approved on a case-by-case basis.	
5. Stream Impact Justification:	
If there are any remaining unavoidable impacts, in the Tier II Report, provide narrative justification and <u>supporting</u> documentation for impacts.	
6. Buffer Impact Mitigation:	
Mitigation or offsets can occur both on and off-site. Per segment, locate areas where impacts to the 100' buffer are unavoidable.	
a) Evaluate on-site alternatives to identify areas where buffers could be expanded beyond the minimum 100' to offset areas of unavoidable buffer width constraints.	
b) If there are no on-site areas, evaluate off-site areas, within the Tier II watershed, where buffers could be improved, expanded, or established.	
7. Buffer Impact Justification:	
If there are any remaining unavoidable impacts, in the Tier II Report, provide narrative justification and <u>supporting</u> documentation for impacts.	

A. Total Stream and Stream Buffer Mitigation		
8. Tier II Stream Mitigation	Left Bank	Right Bank
	16	14
9. Tier II Stream Buffer Mitigation (average of 0' to 300' from bank)	Sq Ft	Sq Ft

- Summarizes impacts
- Totals mitigation for each category
- Provides justification for unavoidable impacts
- Informs applicant of basic mitigation requirements
 - All mitigation must occur in the affected Tier II watershed
 - The mitigation property must be protected in perpetuity
 - Reforestation requires minimum 2yr of monitoring and reporting



Tier II Mitigation Report

Tier II Mitigation Report Template

Purpose:

All information detailed in this report template must be provided to MDE prior to receiving approval for the social and economic justification (SEJ) for public notice and review. The Tier II Mitigation Report provides the Department and the public with a summary of project impacts, functions lost or affected by proposed activities, alternatives considered to reduce or avoid impacts, mitigation offered, draft protection measures, and the non-binding agreements in place between the applicant and the landowner or bank. It is in an applicant's best interest to secure the services of a competent environmental consultant to help formulate their mitigation analysis report. Please review all the information provided to ensure that a sufficient and acceptable Tier II mitigation is completed.

Section 1: Executive Summary

A. **Narrative Summary of Impacts:** The narrative shall include a summary of impacts and why impacts are considered unavoidable. Identify values specifically associated with stream buffers, forest cover, and impervious cover. Tabular totals shall be broken down according to resource type and Tier II watershed impacted. Create additional tables if the project impacts multiple Tier II watersheds.

B. **Impact Summary Table: Watershed 1 (name):**

Impact	Total
Stream	[Insert Total in Linear Feet]
Stream Buffer	[Insert Total in Square Feet]
Forest Cover Loss	[Insert Total in Acres]
Impervious Surface (No ESD treatment)	[Insert Total in Acres]

C. **Narrative Summary of Mitigation Proposed:** The narrative shall include a summary of the proposed mitigation. Identify values specifically associated with streams, stream buffers, and forest cover.

- Summarizes impacts
- Summarizes proposed mitigation
- Includes:
 - Mitigation property searches
 - In-kind mitigation details
 - Out-of-kind mitigation details
- Must provide the draft protection mechanism which must have been submitted to the county for approval



Tier II Report (SEJ) Template



**Tier II Report Template-
Private Entity**



Instructions:

1. Please use this fillable template to assemble your Tier II Report containing your social and economic justification.
2. Do not alter provided text.
3. The executive summary should explain the project and its purpose, summarize avoidance, minimization, and mitigation actions, and briefly describe the social and economic justification basis.
4. If you wish to add information beyond what is within the basic template, please do so via additional appendices.
5. Depending upon the size and scope of the project and its impacts, the applicant may be required to provide supplemental report information, such as a more detailed economic analysis.

Title Page:

- A. Tier II Antidegradation Review and Social and Economic Justification for the **PROJECT NAME AND ASSOCIATED APPLICATION NUMBER(S)**
- B. Date Prepared:
- C. Prepared By:
- D. On Behalf Of:
- E. For:

Section 1: Introduction

- A. Project Summary
- B. Report Executive Summary
- C. Antidegradation Policy (text provided below)

- a. Federal antidegradation regulations (40CFR131.12) require states to develop and adopt a statewide antidegradation policy that protects all Waters of the U.S. from degradation. These regulations also require states to maintain the condition of high quality (i.e. Tier II) waters that have water quality that is better than the minimum standard necessary to meet designated uses.

The Maryland antidegradation implementation procedures are found in the Code of Maryland Regulations (COMAR) 26.08.02.04-2. This regulation explains how Maryland identifies Tier II waters, when a Tier II antidegradation review is required for certain State permits and approvals, and how to determine current Tier II water quality status based on new data. The regulation also describes the social and economic justification procedure that would be necessary to permit the lowering of water quality in a Tier II water. Document purpose – Pursuant to COMAR 26.08.02.04-2 (1), applicants must submit an SEJ if “(a) No cost-effective alternative to the discharge or water quality impacts is available; or (b) The cumulative degradation resulting from nonpoint source pollution and any other permitted discharges would diminish water quality”. Therefore, if impacts cannot be fully avoided, minimized, or mitigated, the applicant may have to provide MDE with an SEJ. The SEJ must demonstrate that an economic hardship and/or public benefit overrides the value of the ecological services or water quality benefit that the Tier II water segment provides. The applicant must also provide documentation to show that all reasonable avoidance, minimization, and mitigation alternatives have been considered, and where economically feasible, implemented.

- Fillable word document that contains the minimum amount of information necessary for MDE to make a Tier II review decision
- Summarizes information from the forms
- Includes the project social and economic justification
- Estimates cost of 1:1, 100% mitigation, and discusses the value of Tier II waters
- Completion allows the project to move forward with public notice*



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Tier II Mitigation Plan



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**Tier II Mitigation Plan
Required Elements for Reforestation,
Afforestation, and Certain Out-of-kind
Activities**



Project Tracking Number/Common Name: _____

Applicant Signature: _____

Date Plan or Plan Proposal Submitted for MDE Review: _____

Background

MDE has determined that the project and applicant referenced above requires a Tier II Mitigation Plan.

Applicants may use this template as a guide to ensure that the minimum amount of information necessary is submitted to Maryland Department of the Environment (MDE) for plan approval. Plans (or plan proposals) must be approved prior to permit issuance. Attach this signed checklist to the monitoring plan/plan proposal.

Introduction

- ☐ Brief application project summary.
- ☐ Purpose of mitigation.
- ☐ Determination of credit.

Plan View Scaled Drawings

- ☐ Vicinity map showing mitigation site(s) and land use.
- ☐ GIS polygon layer of the mitigation site(s) receiving credit.
- ☐ The location, type, and acreage of proposed mitigation activities. Show the boundaries of each area being counted for each type of mitigation credit along with credit, in acres for each area.
- ☐ The location of sediment and erosion control practices incorporating the Best Management Practices for Working in Tier II Waters (see pg. 4).
- ☐ Grading plans.
- ☐ Map showing environmental features.
- ☐ Locations of other land uses such as existing easements and Forest Conservation Act requirements.
- ☐ Include the afforestation or reforestation activities in the sequence of construction.

- Plan drawings
- Planting plan:
 - Native species
 - Density
 - Planting schedule
 - Plant protection method
- Monitoring and maintenance plans
 - 2 years
 - Annual monitoring reports
 - MDE will conduct site visits
- Must provide the recorded conservation easement

Section Three: Mitigation Guidance



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Mitigation Guidance Part 1

- Explains concepts and definitions, such as:
 - Additionality
 - Forest, buffer, and impervious cover impacts
 - Out-of-kind offsets
 - Preservation/Reforestation/Conservation
- Explains the mitigation crediting system
- Provides impact mitigation scenarios



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Reforestation/Afforestation

- *“Establishment of a forest on an area on which forest cover has been absent for a long period of time; or Planting of open areas which are not presently in forest cover”* (Code Of Maryland Regulations (COMAR) 08.19.01.03 MD DNR Forest Conservation)
- Credit for reforestation/afforestation is 1:1, and includes a 2-yr monitoring plan
- Credit for landscaping is $\frac{1}{4}$ credit, and includes a 2-yr monitoring plan
- Credit for natural regeneration is 1:1 credit, and includes a 2-yr monitoring plan
- Areas must be conserved in perpetuity through a legally enforceable agreement



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Conservation

- Mitigation credit for forest conservation ($\frac{1}{2}$ credit), can be earned through the voluntary retention of additional existing on-site forest or off-site forested locations
- Areas counted must be beyond that minimally required by the county or state
- All lands must be protected in perpetuity by legally enforceable means



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Buffer Mitigation

- Buffer replacement, i.e., in-kind buffer reforestation or afforestation receives 1:1 credit
- Buffer improvement, i.e., filling in sparse or missing areas within an established buffer receives ½ credit
- Buffer expansion can count up to 300' per bank, per segment, when calculating area
- ESD & SW management facilities can be located within the buffer if there are no other alternatives
- All lands must be protected in perpetuity by legally enforceable means



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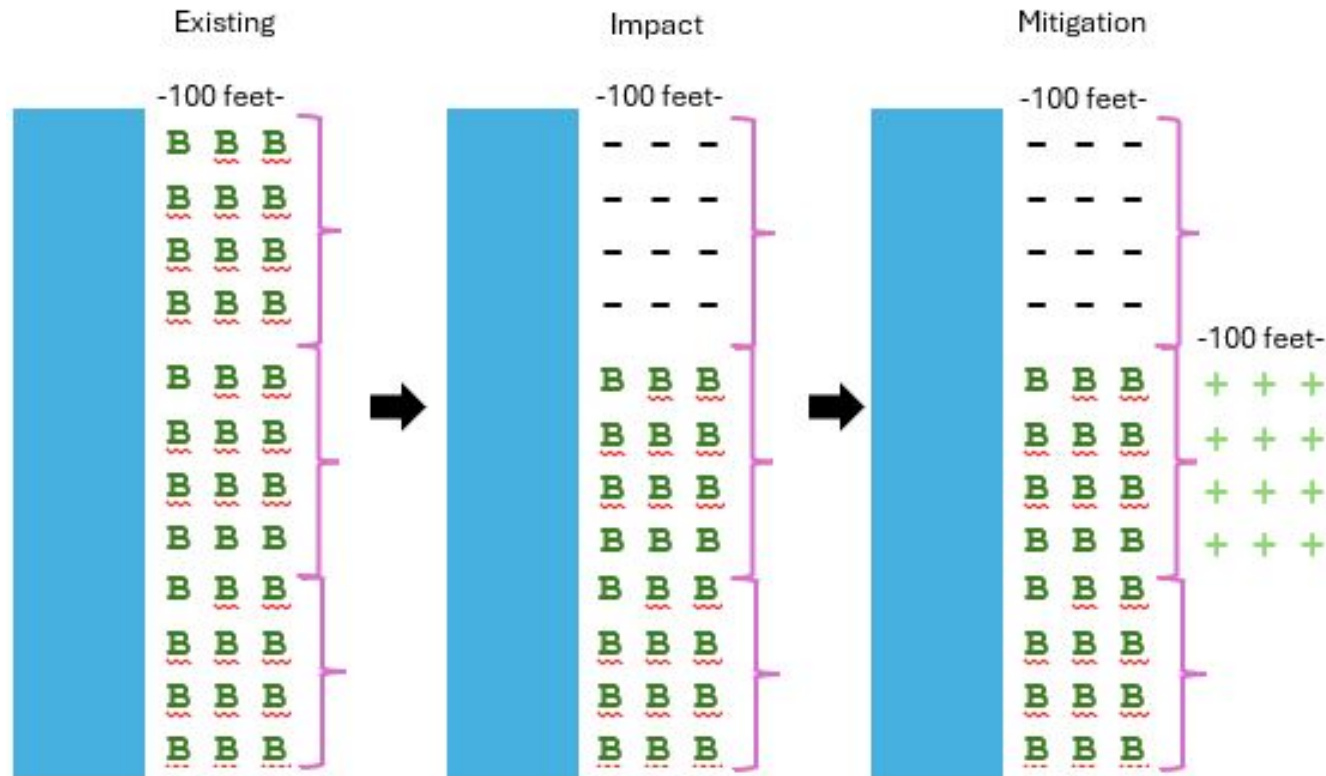
Out-of-Kind Offsets

- Stormwater retrofits, traditional to ESD (1:1 credit)
- Removal of impervious surfaces (1:1 credit)
- Project redesigns (1:1 credit)
- Certain types of stream restorations ($\frac{1}{2}$ credit)
- Projects of community benefit ($\frac{1}{4}$ to 1:1 credit depending upon project)
 - Partnership with school or church to help create ESD features on campus
 - Education center and funding
 - Includes monitoring and reporting



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Buffer Example

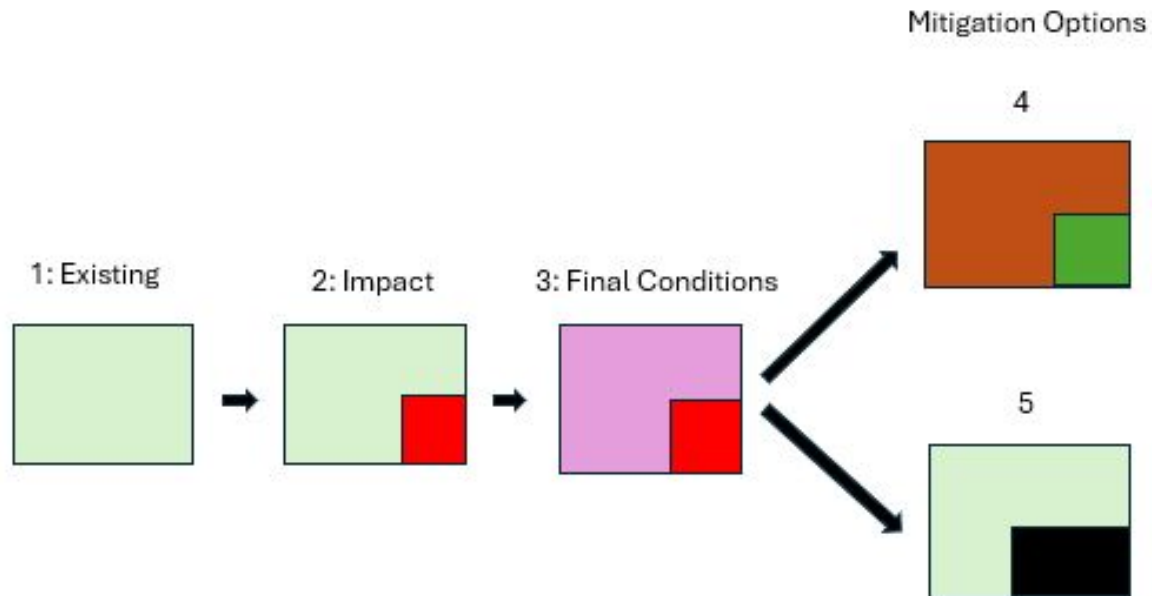


1. Existing: There's approximately 45,000 sqft of Tier II riparian buffer on-site.
2. Impact: The applicant removes approximately 15,000 sqft of Tier II riparian buffer.
3. Mitigation: The applicant expands the existing riparian buffer by 15,000 sqft to mitigate the impact at a 1:1 ratio. The buffer width now averages 100'.



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Development Example



1. Existing: 6-acre lot, all forested

2. Impact: 1 acre cleared

3. Final Conditions: Remaining 5 acres are placed into preservation.

4. Mitigation Option: 1 acre of offsite reforestation.

5. Mitigation Option: 2 acres of offsite forest conservation.

*Note: If the 1 acre of clearing is not treated with ESD, you will need to double the amount of mitigation owed to 2 acres.



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Mitigation Guidance Part 2

- Includes the preferred mitigation options
 - In-kind
 - Conservation
 - Out-of-kind
- Explains the different mitigation implementation types
 - Applicant responsible mitigation: private land purchase, then conservation
 - Mitigation banks
 - Fee-in-lieu: Money must go to restoration activities within the impacted Tier II watershed
- Details the mitigation approvals process
- Lists approved protection mechanisms



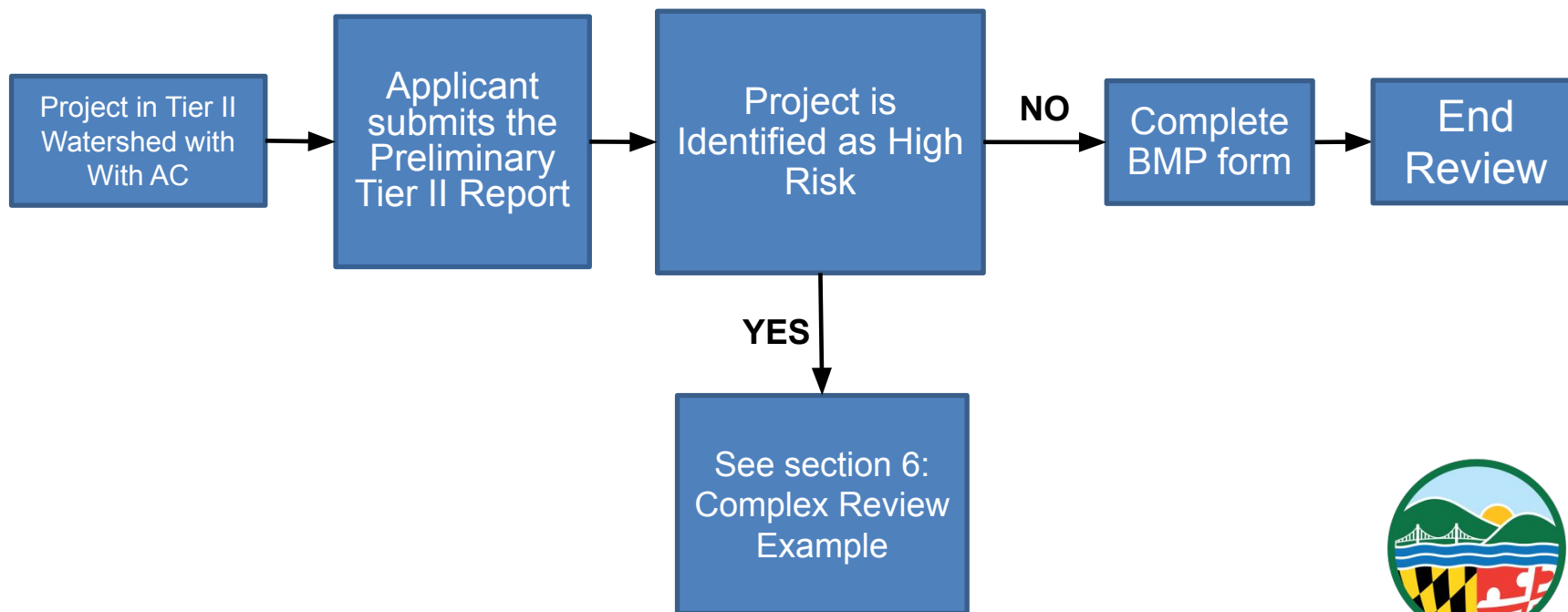
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Section Four: Basic Review Workflow



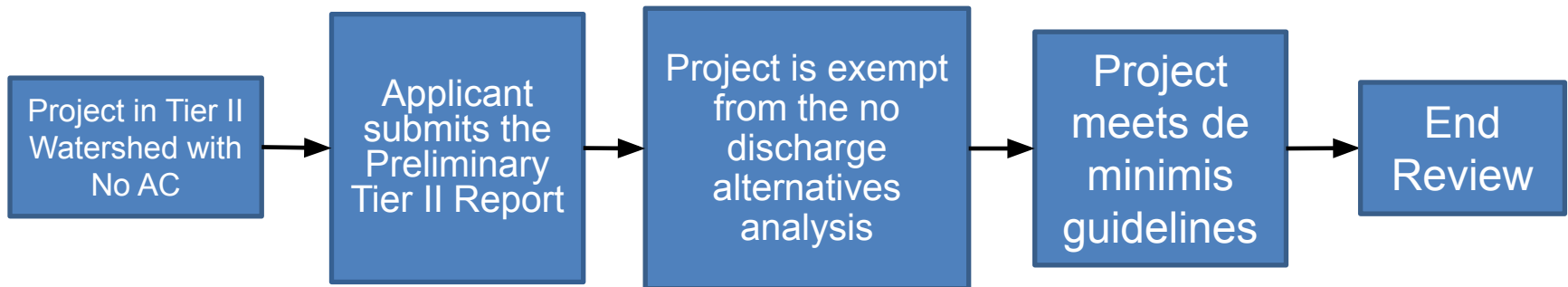
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Basic Tier II Review Workflow (Has AC):



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Basic Tier II Review Workflow (No AC):



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Section Five: Review Example (Basic)



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Preliminary Report (With or Without AC)

1. Located in Piscataway Creek 1 – No AC
2. Storage facility
3. All new impervious surfaces are treated with ESD
4. No stream or buffer impacts
5. Clearing 0.25 acres of forest
6. Project will be completed in one phase
7. Other than the GP-20, no other permits are necessary
8. Qualifies for an exemption and no additional review



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Tier II Letter

- The project qualifies for an exemption from the no-discharge alternatives analysis because the project is located within a Priority Funding Area
- The project does not need additional review because the project has little to no resource impacts
 - New impervious is treated with ESD
 - Forest loss is less than 1 acre
 - There are no stream or buffer impacts



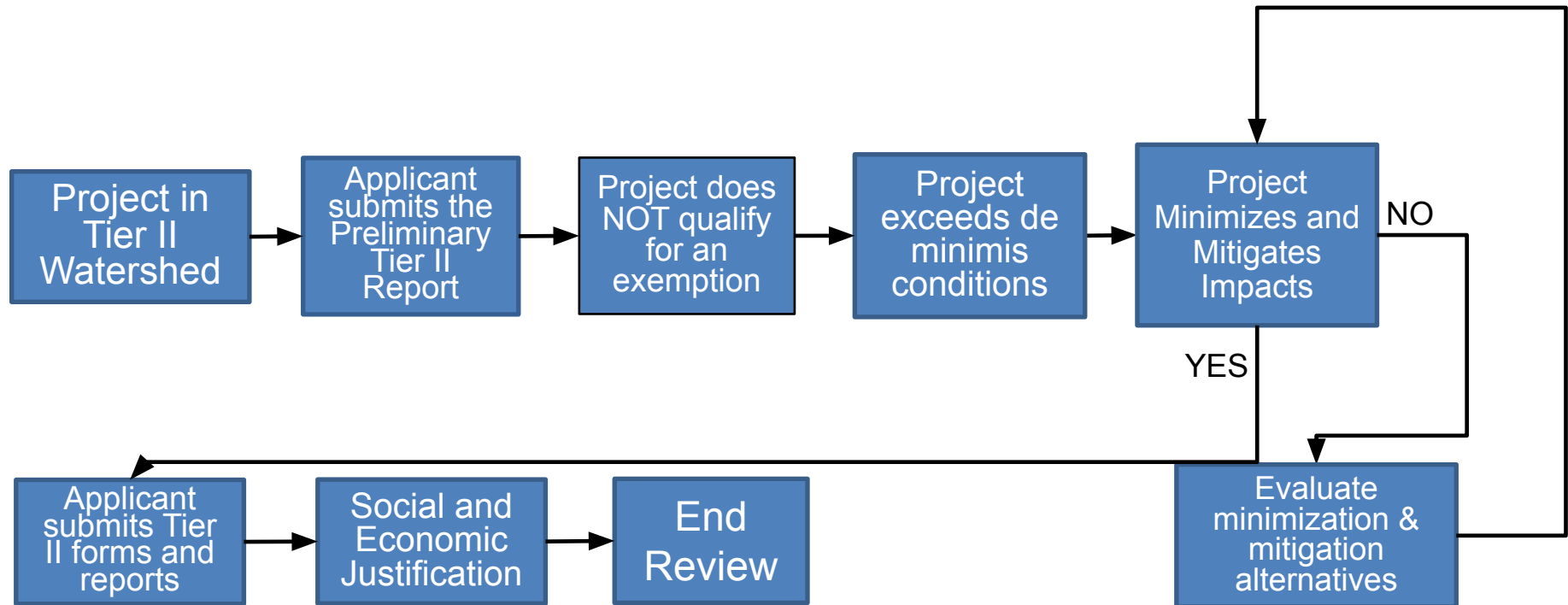
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Section Six: Complex Review Workflow



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Complex Tier II Review Workflow:



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Section Seven: Review Example (Complex)



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Preliminary Report Submission

1. Located in Piscataway Creek 1 – No AC
2. Residential subdivision
3. All impervious cover is treated with ESD
4. Less than 1 acre 100 ft buffer impacts
5. Clearing 20 acres of forest
6. Will be completed in one phase
7. Also requires a nontidal wetlands permit
8. Does not qualify for an exemption & exceeds de minimis



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Applicant Notification

- Informs the applicant that a more extensive Tier II review is required
- Identifies impacts to the Tier II watershed
- Informs the applicant that an SEJ is required
- Provides the necessary forms and documents to complete the review



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Submission of Alternatives Analysis Forms

- No Discharge Alternatives Analysis Form
 - The project did not qualify for any exemptions from the analysis
 - A minimum of 3 sites were evaluated, and none were found to be feasible
 - The applicant provides an adequate narrative rationale for the final decision of reasonableness
- Minimization Analysis Form
 - The applicant calculates impacts
 - The form prompts the applicant to incorporate the enhanced/redundant erosion and sediment control practices
- Mitigation Analysis Form
 - The applicant sums the total mitigation offered for each category



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Submission of Tier II Mitigation Report

- The applicant evaluated 10 properties for reforestation, of which one was feasible
- The selected reforestation property is 5 acres
- The applicant attempts to meet the Tier II mitigation requirement by placing an additional 20 acres of land into conservation
- They are still 5 acres short, and must successfully complete the SEJ to receive approval



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Submission of Tier II (SEJ) Report

- Social Justification:
 - The development will meet the needs of the community to support the population increase expected once the new elementary, middle, and high schools are built
 - The development will increase property values
 - The development will include a new community center and park
- Economic Justification:
 - The project will contribute \$1M annually towards state and federal taxes
 - The project will create 75 temporary and 10 permanent jobs
 - The project will invest \$2M towards the new schools



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Public Notice (Nontidal Wetlands & Waterways Construction Only)

- For public notice applicants must submit:
 - The Mitigation Report which includes a draft agreement between the applicant and the landowner, that has been submitted to the county for approval
 - A complete Tier II Mitigation Alternatives Analysis Form
 - A complete Tier II Report and social and economic justification
- Just because a project moves to public notice does not mean the project has satisfied the Tier II Review



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Public Notice (20-CP only)

- The applicant must provide a Tier II letter stating that they have successfully completed the Tier II review to proceed to public notice
- Projects that **do not** require nontidal wetlands, waterways construction, or any other MDE permits or authorizations may be eligible for conditional approval
- Failure to meet the conditions could result in permit suspension



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Submission of Tier II Mitigation Plan

- The introduction shows how the applicant calculated mitigation credits earned
- Provides detailed plan drawings
- Includes the planting plan
- Contains detailed monitoring and maintenance plans
- Includes the recorded conservation easement



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Tier II Letter

- States that the applicant has satisfied the Tier II review by providing an acceptable avoidance, minimization, mitigation, and social and economic justification
- Provides detailed information regarding mitigation
- Provides conditions of approval such as allowing MDE site access for approvals
- May include the first page of the recorded easement for reference



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Section Eight: Tier II Notices & Resources



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Tier II Notice – Nontidal Wetlands & Waterways Construction Permits Only

- Fee – House Bill 0352
 - Minor :
 - \$400
 - Projects less than 1 acre of wetlands or waterways impacts
 - Major:
 - \$1600
 - Projects greater than 1 acre of wetlands or waterways impacts
 - Fee exempt entities are still currently fee exempt
- Started June 1, 2025
- Applies to **ALL** Tier II watersheds regardless of assimilative capacity



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Tier II Resources

- For Additional Information:
 - [Maryland's High Quality Waters Webpage](#)
 - [Maryland's High Quality Waters Outreach Page](#)
- For Screening: [Tier II Web Map](#)
- Contact: Angel Valdez
[\(angel.valdez@maryland.gov\)](mailto:angel.valdez@maryland.gov)



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