



## **Advanced Notice of Proposed Rulemaking – 2025 Nontidal Wetland Review**

**September 19, 2025**

### **Revisions to Nontidal Wetland Regulations**

The Maryland Department of the Environment (MDE) is considering revisions to regulations in COMAR 26.23.01 through 26.23.05, with a focus on the nontidal wetland mitigation regulations.

### **How to Use This Notice**

Detailed draft regulatory language is included separately for review. This notice is intended to highlight the main areas where MDE is inviting input and providing context for the draft revisions. Stakeholders are encouraged to read the narrative overview together with the draft regulations and provide feedback on both the specific language and the broader policy questions outlined below.

### **Goals of the Revisions**

The revisions are intended to:

1. Improve consistency with federal requirements under the 2008 Federal Mitigation Rule (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 Maryland law, specifically statutory amendments (§§5-901 and 5-910, Environment Article, Annotated Code of Maryland; adopted in 2016 for Nontidal Wetlands – Nontidal Wetland Mitigation Banking) to support mitigation banking and remove barriers to its use;
3. Strengthen MDE's regulatory authority to implement in-lieu fee and mitigation banking programs in a manner consistent with federal requirements (e.g., establishing an in-lieu fee program that can also be used to satisfy 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. Improve mitigation outcomes, by increasing the likelihood that compensatory mitigation requirements will be successfully completed in a timely manner.

## **Major Topics for Review**

As part of this process, MDE is inviting the public's input on several areas in need of revision, including:

- Clarifying the order of preference among mitigation options, emphasizing environmentally preferable approaches and accounting for impacts to overburdened and underserved communities.
- Expanding and clarifying mitigation options, thereby reducing permitting hurdles and resulting in higher-functioning mitigation projects:
  - Encouraging establishment of mitigation banks - include consistent requirements for mitigation banks, in-lieu fee, and permittee-responsible mitigation.
  - Developing a robust in-lieu fee program that is recognized by the U.S. Army Corps of Engineers, which includes establishing realistic in-lieu fee rates.
- Improve replacement of lost nontidal wetland acreage and function.
- Consider the effects of changing environmental conditions.
- Update requirements for mitigation plan approval and construction timing, financial assurances, and performance monitoring.

MDE welcomes feedback on both the draft regulatory text and the broader concepts described above. Input received during this Advanced Notice of Proposed Rulemaking (ANPRM) stage will guide whether and how MDE moves forward with formal rulemaking.

## **Comment Period**

MDE is inviting early input on the draft concepts and draft regulatory language presented in this ANPRM. Feedback received during this stage will help shape the formal proposed regulations that MDE anticipates publication of in Spring 2026.

Comments on these regulations should be sent by December 18, 2025, to:

Ms. Kelly Neff  
Wetlands and Waterways Protection Program  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230  
Email: [wwpp.mitigation@maryland.gov](mailto:wwpp.mitigation@maryland.gov)

More information on the proposed regulations can be found at <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Pages/ANPRM-Nontidal-Wetland-Mitigation.aspx>.

## Listening Sessions

In addition to the option to submit written comments, three Listening Sessions have been scheduled at different times and formats to give the public multiple ways to provide comments to MDE:

- A virtual Listening Session has been scheduled for October 15, 2025, starting at 7:00 PM and ending no later than 9:00 PM. To participate in this Listening Session, please use the following link: [meet.google.com/zvo-dche-qav](https://meet.google.com/zvo-dche-qav) or dial 1-240-200-0677 PIN: 556 633 964#
- An in-person Listening Session with a virtual listen-only option will be held on October 23, 2025, at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD, 21230, starting at 9:30 AM and ending no later than 11:30 AM. To join this Listening Session virtually, please use the following link: [meet.google.com/emz-ysyp-nes](https://meet.google.com/emz-ysyp-nes) or dial 1-513-463-8951 PIN: 330 540 281#
- A virtual Listening Session has been scheduled for October 30, 2025, starting at 2:00 PM and ending no later than 4:00 PM. To participate in this Listening Session, please use the following link: [meet.google.com/fyv-bxuy-noo](https://meet.google.com/fyv-bxuy-noo) 1-209-783-9110 PIN: 665 265 782#

## Schedule

MDE anticipates developing and submitting a final version of the regulations in the Spring of 2026. The timeline for publication will depend on the feedback received during this ANPRM stage.

## Supporting Materials

To help guide review and comment, MDE has prepared several draft materials for stakeholder consideration:

- **Summary of Draft Revisions:** Provides an overview of the content changes under consideration, including reorganization of mitigation-related regulations to meet new formatting requirements (e.g., limits on the length of each regulation).  
[Summary of Draft Revisions \(PDF\)](#)
- **Draft Regulatory Language:** Early draft text that illustrates how revisions may be structured.  
[Draft Regulations \(PDF\)](#)
- **Proposed In-Lieu Fee (ILF) Rates:** Preliminary updates to ILF rates intended to reflect realistic costs of replacing high-functioning nontidal wetlands and to support

development of a federally recognized ILF program. These rates are provided for comment but will not be codified in regulation; future updates will be issued by public notice.

[Proposed 2025 ILF Rates \(PDF\)](#)

- **Additional Resources:**

- [Frequently Asked Questions](#)
- [Documents to be Incorporated by Reference](#)