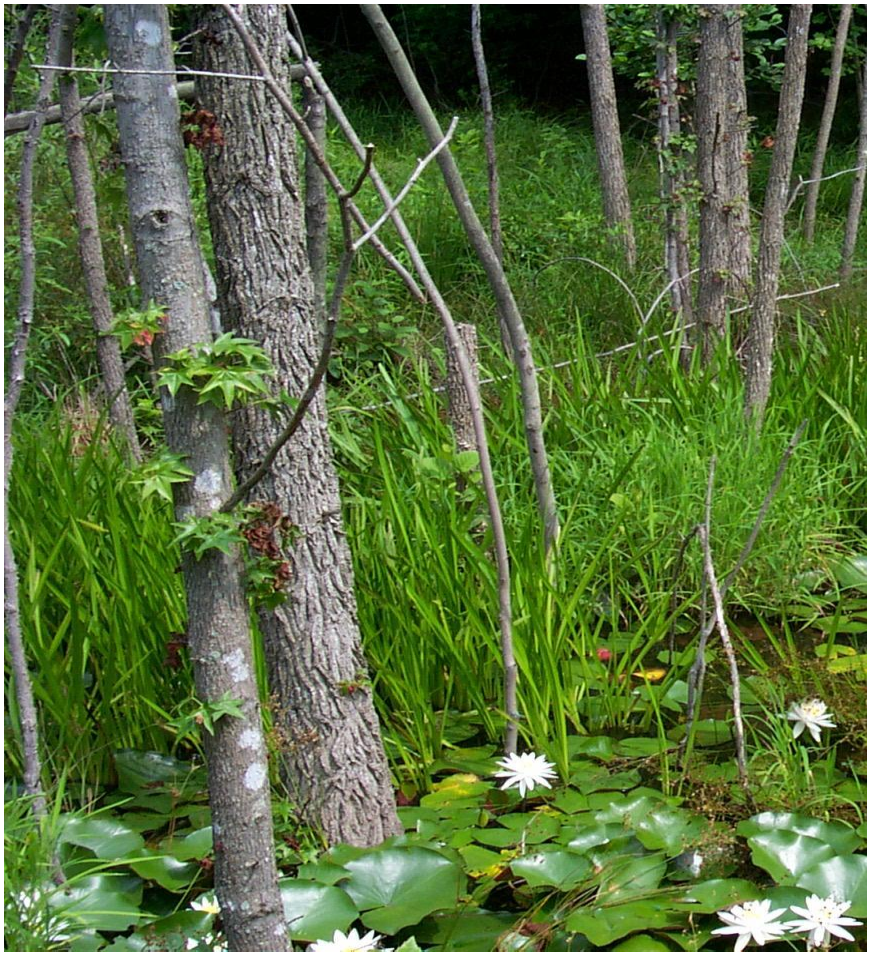
Proposed Revisions to Maryland's Nontidal Wetland Mitigation Regulations and In-Lieu Fee

MDE Listening Session - October 2025



Listening Session Purpose

- Provide brief overview
- Hear feedback (recommend also provide in writing)
- “Rules” of participation

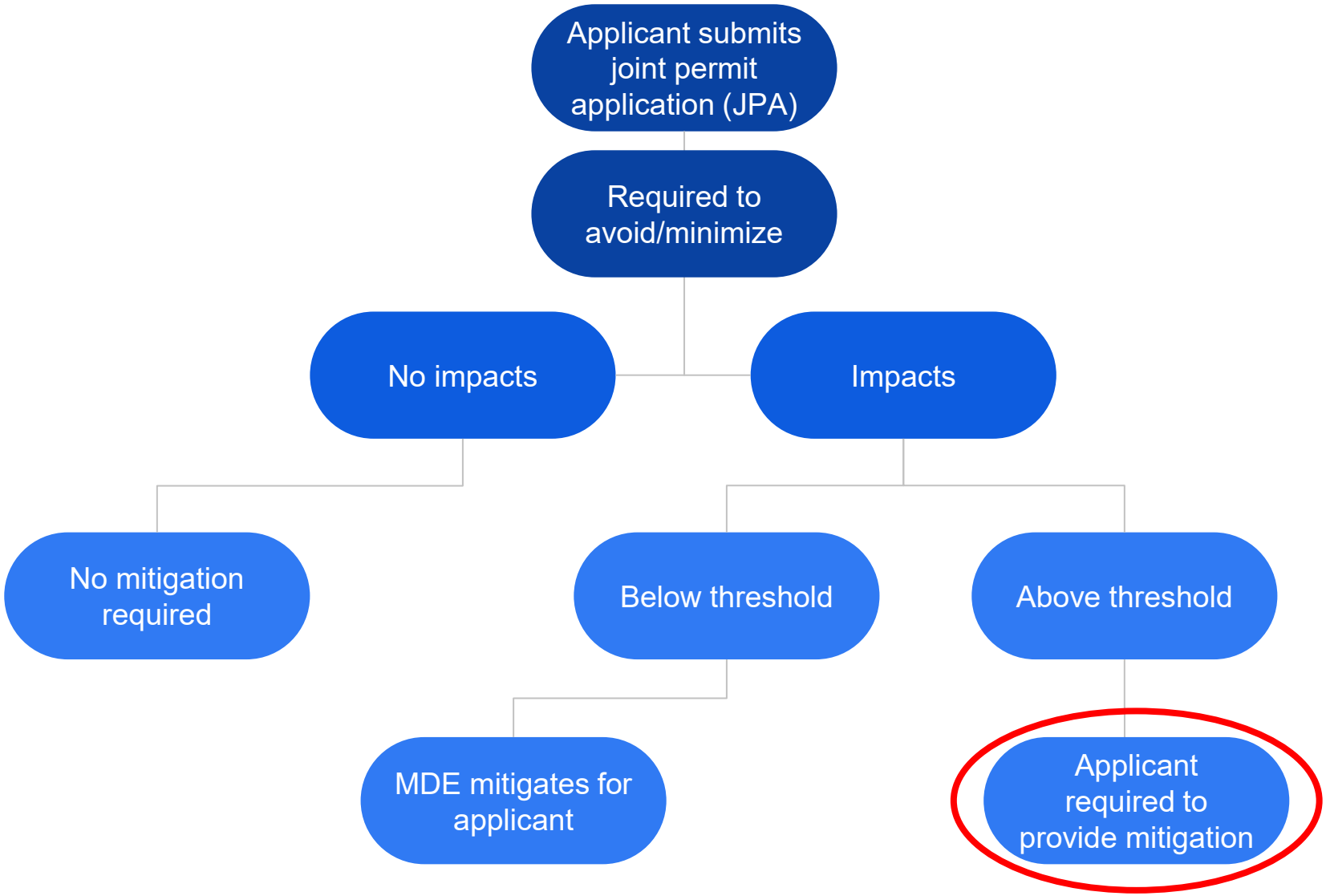
Maryland Nontidal Wetlands Protection Act

- "The goal of the program shall be to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain in nontidal wetlands over the present conditions"

- Not a preservation law - it allows for some impacts (through the permit process) but the overall State wetland resources are maintained/improved.

- Proposed impacts within nontidal wetlands or buffers require state authorization, that considers:
  - Alternatives
  - Avoid and minimization
  - Mitigation

When Do Projects Require Mitigation?



Purpose of Revisions

- Improve consistency with:
  - Federal requirements
  - Maryland Statute
- Develop more mitigation options
  - Encourage bank establishment
  - Revise In-Lieu Fee (ILF) Program

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- Permitting efficiencies
- Improve mitigation outcomes

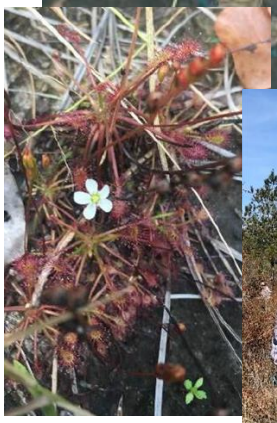
Why Now?

- Permit Efficiencies
- Environmental Benefits
- Overburdened/Underserved Communities
- Climate Resiliency
- Uncertainty of Federal Requirements

Comparison of Mitigation Types

Mitigation Bank	In-Lieu Fee (ILF)	Permittee-Responsible Mitigation (PRM)
Bank sponsor spends own money upfront - permittee purchases credits	ILF sponsor (MDE) accepts ILF funds from permittee - builds project once have enough funds	Permittee is responsible for all work - hires consultant
Large sites (consolidated)		Small sites
Site may be further from impact (service areas)		Site may be closer to impact
Good site selection/connected to existing resources - Higher functioning		Site selection based on opportunity/fragmented - Lower functioning
High regulatory oversight/follow-up		Less regulatory oversight/follow-up - lower success
Built before most impacts - least temporal loss	Built before or after impacts	Built during impacts
Sponsor has liability		Permittee retains liability

Comparison of Mitigation Types (Cont.)



Bank (St. Charles)

- Large mitigation site (~13 acres)
- High functioning (e.g., recreation/education for the high school)

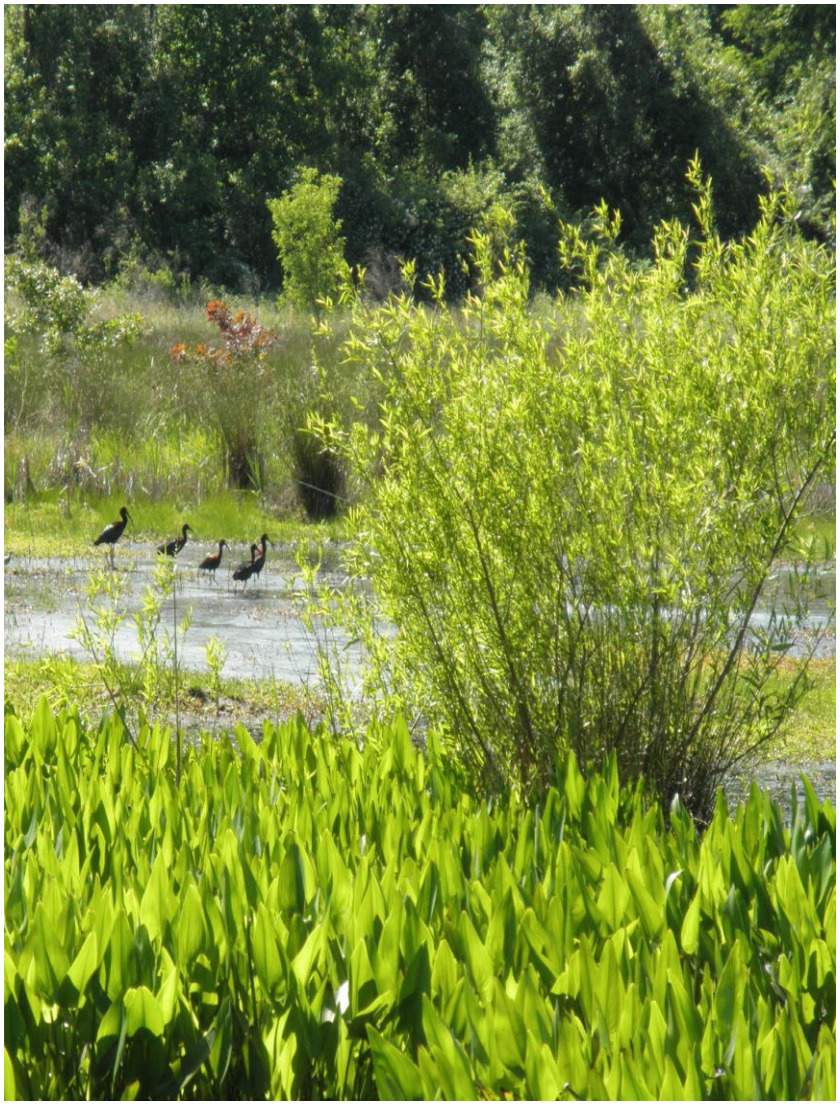
In-Lieu Fee (TNC/National Aquarium)

- Large mitigation site (~24 acres)
- Adjacent to large wetland/forest within large protected area
- High functioning - excellent habitat (RTE species), public access, education

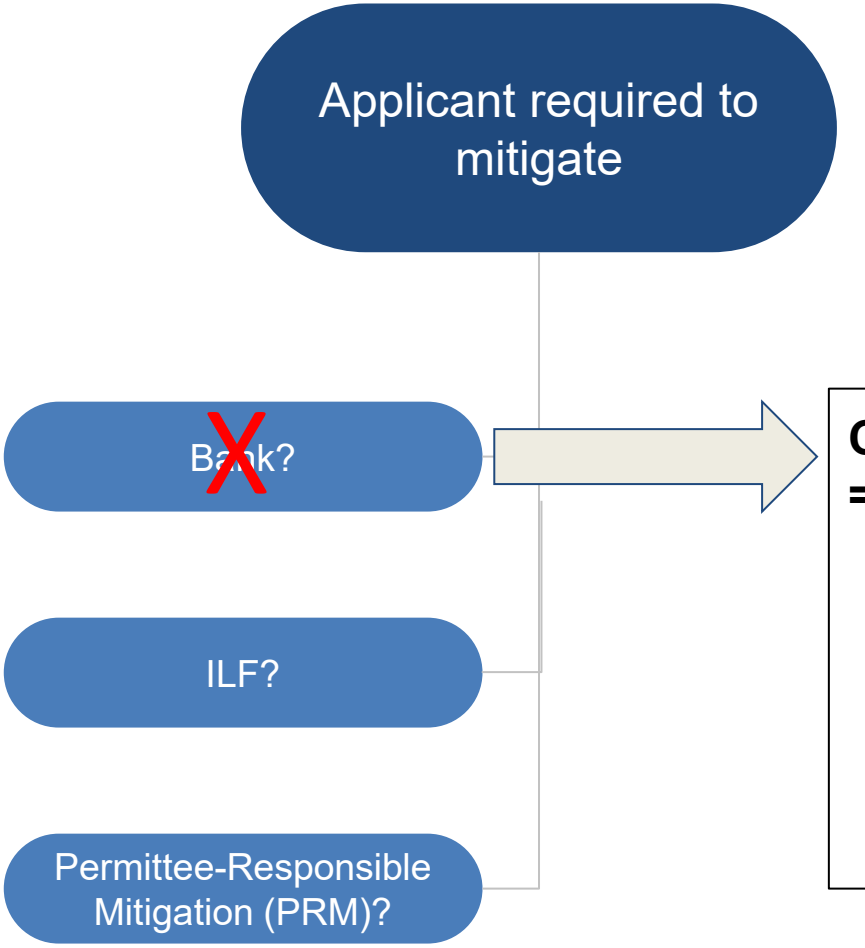
Mitigation Options

Applicant required to mitigate

- Bank?
- ILF?
- Permittee-Responsible Mitigation (PRM)?



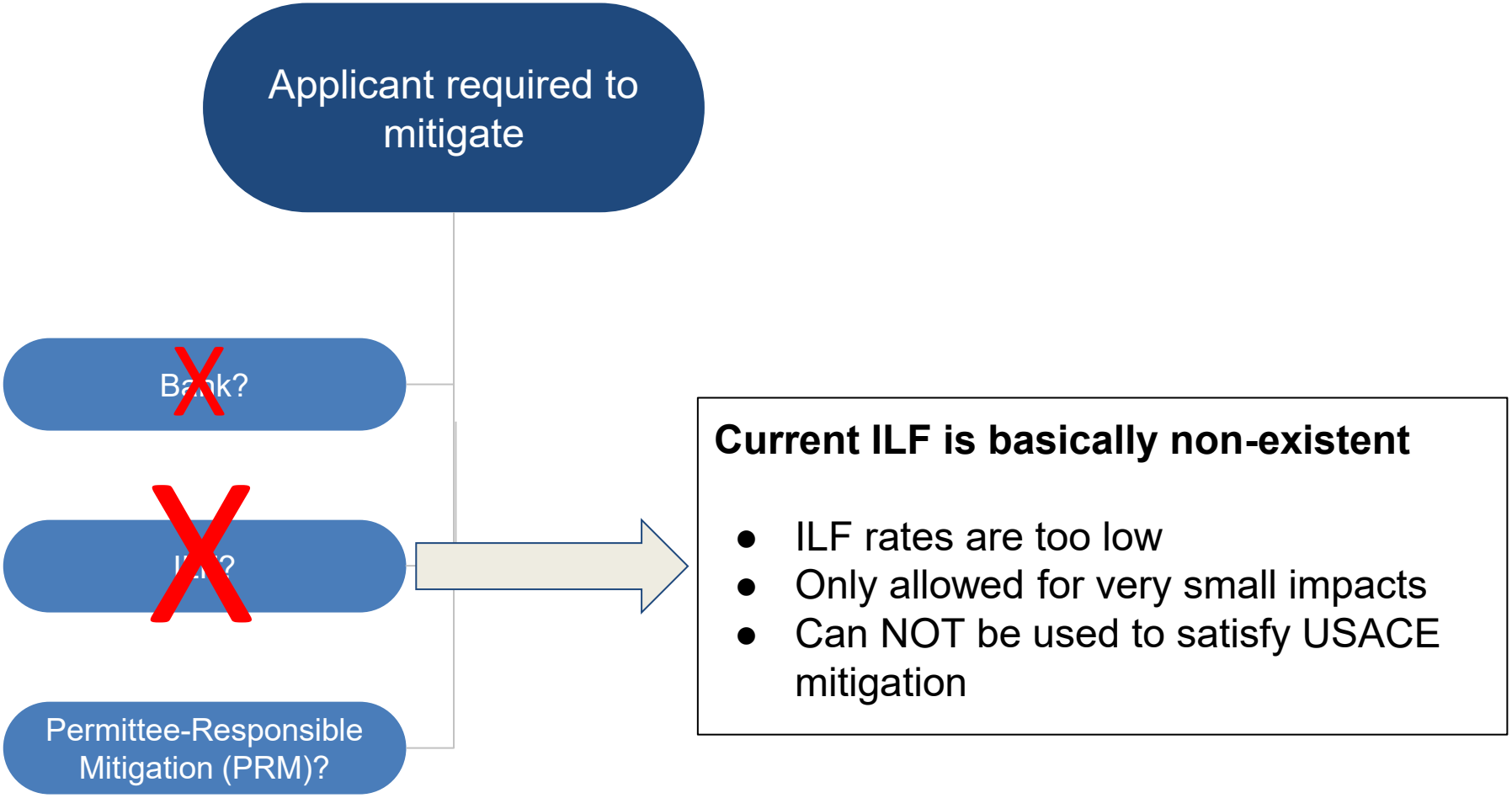
Mitigation Options - Reality



Current regulations discourage banks = few mitigation banks

- Require extensive mitigation site search
- Require multiplier when using a bank
- Do not have consistent requirements for banks, ILF, and PRM

Mitigation Options - Reality



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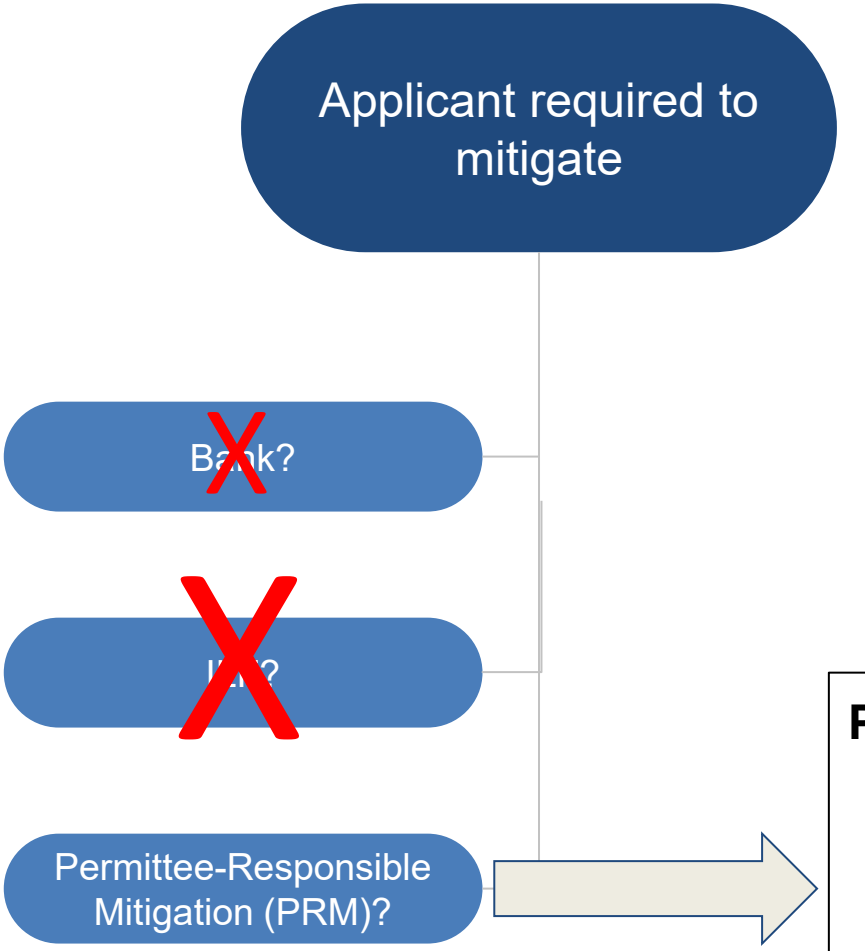


PRM is main option remaining

- Difficult to find (permit delays)
- Unpredictable costs
- Long-term liability for Permittee
- Often lower quality mitigation

Balancing Economic Growth and Environment

Economic Growth

- Permits may be delayed as the applicant looks for mitigation = slows projects (e.g., affordable housing)
- Applicants want predictability (know mitigation costs upfront)
- Applicants do not want long-term mitigation liability

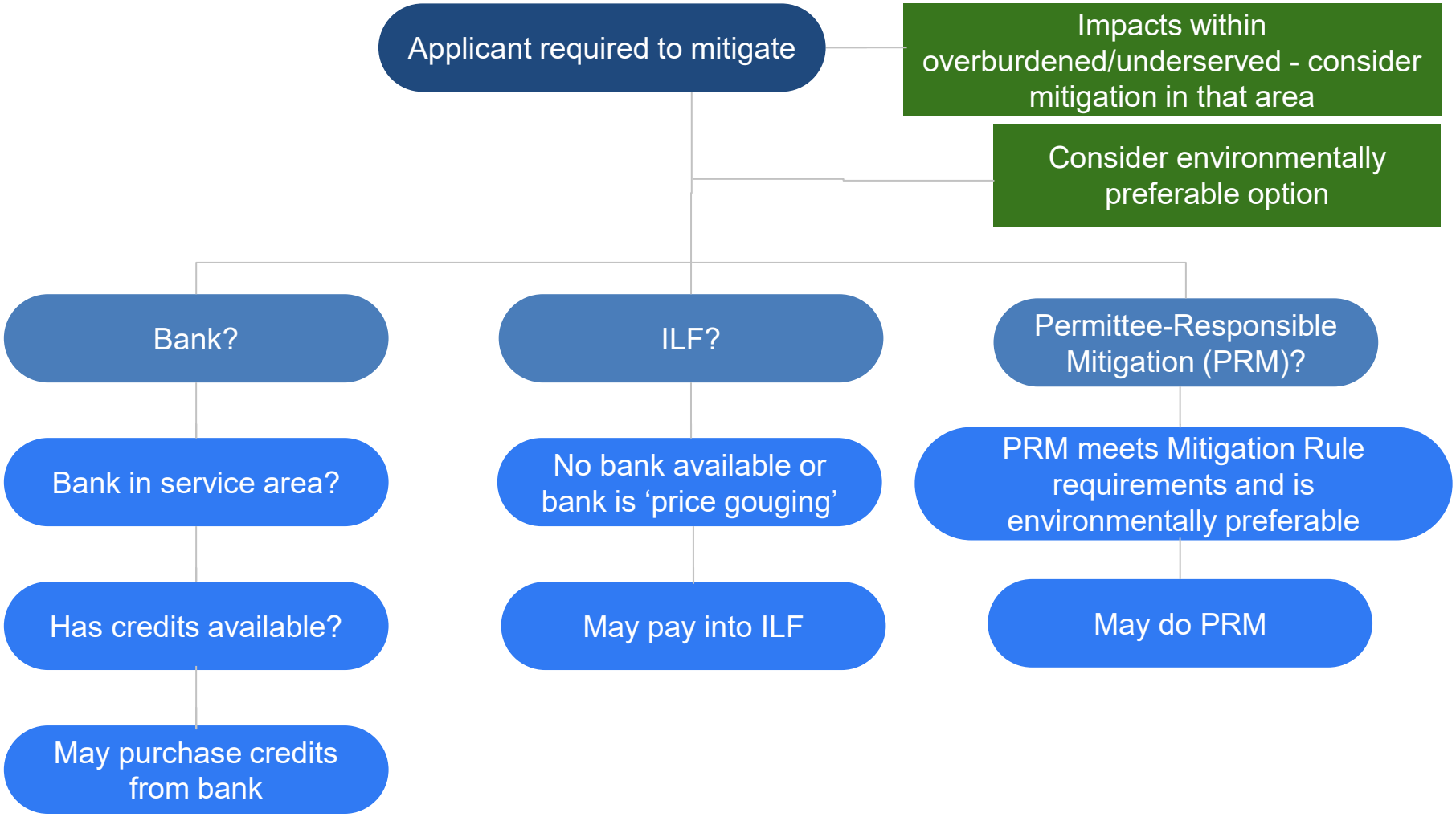
Environment

- Mitigation has historically resulted in lower-quality projects
- Mitigation was done piecemeal (e.g., postage stamp wetlands in someone's yard) and often failed to meet performance standards

Regulation Changes

- Banks/ILF allow permittees more easily satisfy mitigation. Permittee is then done with mitigation liability.
- All mitigation types must meet high environmental standards (e.g., performance standards, long-term management).
- Banks/ILF have been shown to result in higher quality projects (e.g., better site selection and agency review/follow-up).

Mitigation Options - Proposed



Stakeholder Meetings

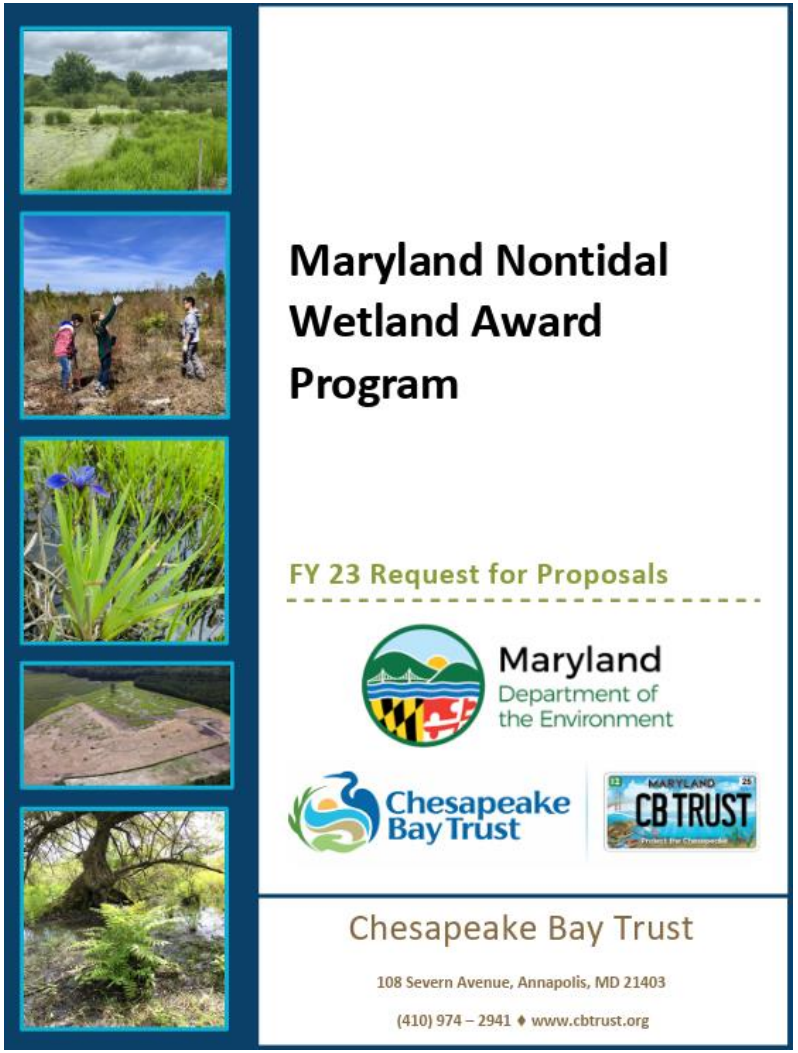
- Meeting held from 2016-2019 included:
  - Environmental groups
  - Agriculture
  - Transportation/utilities
  - Department of Defense
  - Interagency Review Team (IRT)
  - Maryland Building Industry Association (MBIA)
  - Mitigation bankers/environmental consultants
  - Public meetings across State
- Feedback was mostly favorable, with some concerns → MDE took these into account
- <u>Want more mitigation options, including an ILF</u>

Stakeholder Concerns?

- ILF prices need to be realistic = include all costs and be updated regularly so are sustainable
- Potential for bank "price gouging"
  - Developed a new regulation to discuss "environmentally preferable" mitigation
  - Considers cost (e.g., multiplier above ILF rate)
  - Allows for PRM that is environmentally preferable
- "Mom and Pops" with small impacts
  - Reduced ILF rate is 25% for certain projects (e.g., sheds)
- Don't want to encourage more wetland impacts
  - This will not affect the existing avoidance/minimization requirement
- Banks and ILF allow mitigation to be further from impacts
  - "Environmentally preferable" regulation considers location
  - Consideration of on-site mitigation

ILF Program

- Consolidate funds to build larger sites
- Currently work with Chesapeake Bay Trust to put out a Request for Proposal for mitigation projects
- MDE can determine priorities for sites (e.g., watershed, climate resiliency, overburdened communities, etc.)
- More ILF sites in ground, closer to impacts



Next ILF site =
Bruffs Island Wetland Mitigation

Existing

Proposed

How were ILF Rates Established?

- ILF rates developed in 1991 - NOT UPDATED
- New rates based on 8-digit Federal Hydrologic Code (HUCs)
- Revised ILF rates reflect current mitigation costs
  - Requested cost estimates from mitigation providers, state agencies, etc.
  - Costs included all requirements of Federal Mitigation Rule (e.g., monitoring, long-term management, etc.)
  - MDP provided land value costs by HUC
- Future revisions to ILF rates
  - Annually, revise based on Consumer Price Index
  - Every 3 years, evaluate all costs - publish revised rates on Public Notice

ILF Rate Phasing

- Phasing of ILF rate revisions
  - Year 1 = 50% of final
  - Year 2 = 75% of final
  - Year 3 = 100% of final

Interim Period

- Threshold for payments into ILF Program (if no bank or other environmentally preferable option):
  - During years 1 and 2 (Interim Period):
    - < ½ acre mitigation required
    - If Permittee wants to pay final rates, no limit to size of mitigation required
  - After year 3 (final ILF rates): No size limit

DRAFT Proposed 2025 ILF Rates

HUC Name	Single Family (25%)	(50%)	(75%)	Final Total/Acre (100%)
Chincoteague	$48,001	$96,001	$144,002	$192,002
Lower Susquehanna	$65,970	$131,939	$197,909	$263,878
Chester– Sassafras	$55,062	$110,124	$165,186	$220,248
Gunpowder– Patapsco	$69,878	$139,755	$209,633	$279,510
Severn	$75,559	$151,118	$226,677	$302,236
Choptank	$50,027	$100,054	$150,081	$200,108
Patuxent	$70,182	$140,364	$210,546	$280,728
North Branch Potomac	$58,567	$117,134	$175,700	$234,267
Cacapon– Town	$59,003	$118,006	$177,009	$236,012
Conococheague– Opequon	$63,523	$127,045	$190,568	$254,090
Middle Potomac Catoctin - upper	$63,819	$127,639	$191,458	$255,277
Middle Potomac Catoctin - lower	$87,136	$174,272	$261,407	$348,543
Monocacy	$65,886	$131,772	$197,658	$263,544
Middle Potomac– Anacostia– Occoquan	$87,963	$175,927	$263,890	$351,853
Lower Potomac	$64,920	$129,839	$194,759	$259,678
Nanticoke	$44,548	$89,096	$133,643	$178,191
Tangier	$44,333	$88,666	$132,999	$177,332
Pocomoke– Western Lower Delmarva	$44,243	$88,487	$132,730	$176,973
Youghiogheny	$58,777	$117,553	$176,330	$235,106

Next steps

- MDE will consider comments and revise draft language
- Potentially post revised regulations on PN and enact regulations in summer 2026
- More information: https://mde.maryland.gov/programs/water/WetlandsandWaterways/AboutWetlands/Pages/mitigation.aspx

Comments: to wwpp.mitigation@maryland.gov

Deadline: December 18, 2025

Future listening session:
Oct 30 @ 2:00 PM (Virtual)