SUMMARY BASIS FOR DECISION

Frederick County DPW	18-NT-3055/201860283
Name of Applicant	Application Number
Pavla Dilnesahu/Kevin Sze	August 18, 2026
Project Manager	Date of Decision

The Environment Article, Annotated Code of Maryland and the Code of Maryland Regulations establish criteria for the Maryland Department of the Environment (Department or MDE) to consider when evaluating projects that propose to change the course, current or cross section of a nontidal stream or other body of water or to impact a nontidal wetland. If the criteria are satisfied, the Department may issue a permit for the proposed activity. The Department may deny a permit for a waterway construction activity that it believes is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest. The Department may not issue a nontidal wetland permit for a regulated activity unless it finds that the applicant has demonstrated that a regulated activity, which is not water-dependent, has no practicable alternative, will minimize alteration or impairment of the nontidal wetlands, and will not cause or contribute to a degradation of ground or surface waters.

In the case of the proposed improvements to Boyers Mill Road the question for the Department to address is whether or not the proposed project impacts are acceptable under the regulations as they pertain to such construction activities. The project will permanently impact 14,395 square feet of emergent nontidal wetland, 36,969 square feet of 25- foot nontidal wetland buffer, 588 linear feet of stream, and 27,600 square feet of 100-year nontidal floodplain. The project will temporarily impact 4,537 square feet of emergent nontidal wetland, 5,538 square feet of 25-foot nontidal wetland buffer, and 281 linear feet of stream, and 8,649 square feet of 100-year nontidal floodplain.

PUBLIC NOTICE

Adjoining property owners, local government officials and other interested persons must be notified of proposed impacts to nontidal wetlands and waterways. In addition, an opportunity to comment and request a public informational hearing must be provided via a local newspaper. The public notice on this application was published in *The Frederick News Post* on May 5, 2026.

No comments were received during the public notice period, nor was a public informational hearing requested. Several adjoining property owners did contact the Department requesting clearer maps and information to help property owners evaluate direct property impacts and determine whether to request a public informational hearing. Other questions about the project that did not directly relate to natural resources impacts were referred to the Applicant for response.

PROJECT PURPOSE AND NEED

In order for the Department to authorize impacts to nontidal wetlands and their regulated buffers, regulated activities must be determined to be necessary and unavoidable to meet the basic project purpose. It is also important to note that the orderly development and use of land is regulated through planning and zoning controls implemented by the local government. In this particular instance, Frederick County makes the decision about appropriate land use of the property. The project's purpose is pavement reconstruction, widening, and resurfacing of Boyers Mill Road along with roadway safety and drainage improvements from south of Lake Linganore to Old National Pike (See in File, Updated *Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland* (Application), Section 2a Project Description dated February 5, 2026).

ALTERNATIVES ANALYSIS

For projects that are not water-dependent, the applicant must conduct an alternatives analysis to demonstrate that the project has no practicable alternative. The factors to be considered are whether the project purpose can be accomplished using one or more alternative sites in the general area; a reduction in the size, scope, configuration or density would result in less impact; the applicant made a good faith effort to accommodate the site constraints that caused the alternative sites to be rejected; and that the regulated activity is necessary for the project to meet a demonstrated public need. Given that the proposed improvements are to an existing roadway, no alternative sites exist (See in File, Application, Section 6. Alternative Site Analysis). Through the review process, which included multiple site visits, the Department determined that there are no practicable alternatives to the proposal.

AVOIDANCE AND MINIMIZATION

If the alternative site analysis is accepted, the applicant must demonstrate that adverse impacts to nontidal wetlands, their regulated buffers, and the 100-year frequency floodplain are necessary and unavoidable. Disturbance is limited to the minimum area required for construction. Roadway alignments have been shifted to reduce impacts, and proposed stormwater facilities are incorporated to control runoff. Culverts will be depressed so as not to impede fish migration, and the proposed culvert designs will also enhance stream outfall conditions northbound of the site.
Impacts to wetlands and buffers are unavoidable to complete the road upgrades. To minimize these impacts, the proposed design utilizes the minimum widths for the right-of-way, travel lanes, and shoulders, while incorporating headwalls of maximum usable height. The design also utilizes the minimum allowable pipe length per Frederick County standards to tie out existing grades (See in File, Application, Section 4. Reduction of Impacts). Through the review process, which included multiple site visits, the Department determined that the project satisfied the regulatory requirement to avoid and/or minimize impacts to regulated resources.

WATER QUALITY

Erosion and sediment control measures and stormwater management practices are designed to prevent the degradation of ground and surface water quality. Sediment pollution is addressed under Maryland's Erosion and Sediment Control Act. The law mandates local Soil Conservation Districts to review and approve erosion and sediment control plans developed in accordance with State standards. The Department's programmatic responsibilities are limited to promulgating regulations, and developing standards, ordinances and other criteria necessary to administer an erosion and sediment control program, including program oversight and delegation of enforcement authority to local governments. As a result, the Frederick Soil Conservation District is responsible for the review and approval of an erosion and sediment control plan for the proposed project.

Stormwater discharges are addressed under Maryland's Stormwater Management Act. The law requires counties and municipalities to "adopt ordinances necessary to implement a stormwater management program." The Department's programmatic responsibilities are limited to promulgating regulations defining the minimum features of a stormwater ordinance and program oversight. The Department also reviews the stormwater management program of the counties and municipalities and their field implementation and requires corrective action where a program is found deficient. For most projects, compliance with the County-issued stormwater management approval ensures that the project will not degrade water quality, but for projects affecting Tier II waters, the Department will require a separate anti-degradation analysis. In this particular case, however, the Frederick County Division of Planning and Permitting is responsible for the review and approval of the project's stormwater management plan.

During the application review process, the Department verifies that appropriate best management practices are incorporated into the sediment and erosion control plans and the stormwater management plans to protect the State's water resources. In order to ensure that these practices are contained in the project's final design plans, the applicant will submit approved sediment and erosion control plans and stormwater management plans to the Department prior to the commencement of construction activities authorized by the Permit.

Construction activities in waters of the State are guided by both statute and regulation. Title 5, Subtitle 5 of the Environment Article, Annotated Code of Maryland, establishes an administrative procedure that promotes public safety and welfare. This administrative procedure is further described in the Code of Maryland Regulations (COMAR) 26.17.04. These regulations govern the construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction or any change of the course, current, or cross section of a stream or water body within the State including changes to the 100-year frequency floodplain of free-flowing waters. (Note: Free-flowing waters do not include State or private wetlands or areas subject to tidal flooding.) The requirements of both statute and regulation are combined in the permit application review process. During the evaluation of an application, WSA may require an applicant to address issues relating to:

- Safety, operation and maintenance of the structure;
- Ability of all on-site construction to withstand the impacts of the 100-year flood event;
- Flooding on adjacent properties;
- Erosion of the construction site or stream bank; and

· Environmental effects, such as the project's impacts on existing in-stream fisheries; wildlife habitat; or rare, threatened or endangered species.

The issuance of a permit at the conclusion of the permit application review process indicates that the project adequately preserves public safety, promotes the general public welfare, and protects instream resources.

The regulated impacts to nontidal floodplains and streams from this project are the result of culvert improvements. A 100-year Floodplain Study Report for Boyers Mill Road prepared by CBM Consulting dated October 28, 2025 (see permit file) was reviewed, and subsequent email correspondence with the applicant's consultant dated April 17, 2026 (see permit file) confirmed that only one adjoining property owner would be affected by a rise in the 100-year flood elevation. The adjoining property owner signed a letter dated April 16, 2026 (see permit file) accepting the proposed change in the floodplain, satisfying the criteria in COMAR 26.17.04.11B(6).

ENDANGERED SPECIES

Once the application is received, it goes through a screening process. This screening process uses Geographical Information System (GIS) to determine the proposed site location and whether or not there are designated resources in the area such as rare, threatened or endangered species. If there are resources identified, the Division sends copies of the proposed plan to the appropriate agencies to review and send comments. No rare, threatened, or endangered species were identified in the GIS screening process.

HISTORIC PRESERVATION

The application was also screened using GIS for historical and archeological resources. The application was forwarded to the Maryland Historic Trust (MHT) for review because of potentially impacting historic properties. MHT provided a sign-off, dated March 26, 2018, with determination of no adverse effect on historic properties.

MITIGATION

Mitigation is only a consideration in a permit decision after steps have been taken to avoid and minimize impacts to nontidal wetlands and their regulated buffers, and nontidal waterways, including the 100-year floodplain. The Permittee is required to mitigate the loss of 14,395 square feet of emergent nontidal wetland by creating the equivalent of at least 14,395 square feet of nontidal wetland. The applicant confirmed in a February 6, 2026, email that onsite mitigation is not feasible since the applicant only owns the width of the proposed road. The Even Flow Mitigation Bank has an approved service area that includes the impact location and will replace lost functions and acreage from the proposed wetland impacts. The Department requires that the mitigation bank be monitored to ensure it meets performance standards and be protected and maintained in perpetuity through a conservation easement and long-term management. In an August 4, 2026, the Department's Mitigation and Technical Assistance Section acknowledged receipt of the Compensatory Mitigation Responsibility Transfer and Sales Notice dated August 3,

2026, confirming that 14,395 square feet of nontidal wetland mitigation bank credits were purchased from the Even Flow Mitigation Bank. The mitigation requirement for this permit has been satisfied.