

SUMMARY BASIS FOR DECISION

Howard County Department of Public Works

Name of Applicant

24-NT-3197/202461369

Application Number

Paula Stonesifer/Debra Correia

Project Manager

May 15, 2025

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 the existing Patuxent Branch Trail including trail widening, drainage improvements, stormwater management, and a temporary access 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 81 square feet of emergent nontidal wetland, 93 square feet of 25-foot nontidal wetland buffer, 30 linear feet (244 square feet) of stream and 132,060 square feet of 100-year nontidal floodplain. The project will temporarily impact 2,113 square feet of emergent nontidal wetland, 6,469 square feet of 25-foot nontidal wetland buffer, 54 linear feet (181 square feet) of stream, and 6,192 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 *Howard County Times* on February 6, 2025.

During the public notice period, the Department received comments and a request for a public informational hearing, which have been added to the file. A Virtual Public Informational Hearing was held on March 31, 2025. The following is a summary of the comments received during the public notice comment period which were made at the hearing and received during the public comment period that concluded on April 14, 2025, and reference to the section where these comments will be addressed:

1. Public outreach efforts- discussed below
2. Extension of comment period- discussed below
3. Public need for the project- discussed in Project Purpose and Need
4. Drainage improvements – discussed in Avoidance and Minimization
5. Tree removal – discussed in Avoidance and Minimization
6. Impervious trail- discussed in Avoidance and Minimization
7. Access road adjacent to boardwalks- discussed in Avoidance and Minimization
8. Stormwater management- discussed in Water Quality
9. Wildlife concerns- discussed in Endangered Species

The Department received comments that the public was unaware of the proposed project. Howard County held several public outreach meetings associated with the project beyond the scope of the Department's nontidal wetlands and waterways authority, including:

- Virtual Public Meeting, January 2022
- Howard County Transportation Open House, February 2022
- Kings Contrivance Village Board Virtual Presentation and Meeting, July 2022
- Howard County Transportation Open House, February 2023
- Howard County Transportation Open House, January 2024
- Howard County Transportation Open House, January 2025
- Kings Contrivance HOA Presentation and Meeting, March 2025
- Columbia Association HOA Presentation and Meeting, April 2025

The Department received a request for the public comment period to be extended in order to allow for more comments from residents that will be impacted by the proposed project. As the Department has followed the guidelines for public notices outlined in Code of Maryland Regulations (COMAR), an extension was not granted.

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, Howard County makes the decision about appropriate land use of the property. The project's purpose is to upgrade the trail surface to improve trail conditions and reduce maintenance needs, provide adequate drainage, meet current stormwater management requirements, and address erosion issues along the trail to improve safety and reduce sediment deposition into the Little Patuxent River (*Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, (Application) Section 2d*).

During the public informational hearing and subsequential public comment period, the Department had inquiries about the project's purpose and need. Through the review process, which included multiple site visits, the Department determined that the project's purpose and need had been properly addressed in the Application (as stated above).

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.

The project is located on the existing Patuxent Branch Trail. The project will improve the surface condition of the trail, which will improve the safety and usability of the trail for the public. The project will also upgrade the existing trail to meet Recreational Trail Standards (Application, Section 7f). Through the review process, which included multiple site visits, the Department determined that there were no practical alternatives.

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.

Steep slopes throughout the project corridor made drainage improvements a key piece of the project. Early drainage designs included long ditches along the west side of the trail that directed water towards a handful of existing and proposed culverts, which would have required extensive grading and additional wetland and tree impacts. The location and extent of drainage ditches were reduced to select locations so that the current design only includes ditches where drainage is critical and root impacts are minimal. The remainder of the runoff is now being proposed to sheet flow across the trail to reduce the need for cross culverts, long drainage ditches, and extensive grading (Application, Section 4f).

A particular area of concern for the project was between Stationing 27+00 and 31+00. This area is a low point where sheet flow regularly crosses the trail, creating eroded potholes that collect water. Drainage improvements are necessary to ensure trail stability and minimize trail maintenance, so an additional culvert is being proposed at this location. To reduce grading and draining a nontidal wetland, a J inlet was designed at the low point just outside of Wetland N (forested nontidal wetland). The J inlet will only permit water to enter the inlet under storm conditions which would otherwise flood the trail, thereby preventing the inlet from draining Wetland N under normal conditions. Outfall stabilization of the proposed and the existing culvert just north of the riser structure are required to meet MDE requirements, which resulted in nontidal wetland impacts (Application, Section 4f).

There will be no tree removals 6" or greater in either the stockpile areas or the three turnaround areas (email from Andrew Aguilar, April 11, 2025). Howard County reviews and approves Forest Conservation Plans, if required.

The existing trail was determined to be existing impervious for the purpose of drainage calculations. The trail is likely compacted and clogged with sediment over time given the proximity to the nearby stream. Any work done on this trail, as long as it doesn't significantly change the cross-section or location, would be considered maintenance from the stormwater management perspective (email from Marshall Davidson, April 14, 2025)

The boardwalks along the trail are not capable of supporting construction equipment, so the temporary access roads around the boardwalks were unavoidable. These access roads will temporarily impact the nontidal wetlands. Following construction, the access road will be removed and reseeded to ensure the reestablishment of nontidal wetland vegetation (Application, Section 4f).

Through the review process, which includes multiple site visits, the Department determined that the project satisfied the regulatory requirements for avoidance and/or minimization 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 Howard 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 Howard Soil Conservation District 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 insure 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.

The project will permanently impact 30 linear feet (244 square feet) of stream and 132,600 square feet of 100-year nontidal floodplain. The project will also temporarily impact 56 linear feet (208 square feet) of stream, and 6,192 square feet of 100-year nontidal floodplain. These impacts are associated with improvements to the existing Patuxent Branch Trail that will include trail widening, drainage improvements, stormwater management, and a temporary access road. The applicant, through its consultant RK&K prepared and submitted to MDE a Floodplain Modeling Report evaluating the effect of the improvement of the existing trail for existing and proposed site conditions during the 2-year, 10-year, and 100-year storm events. The Report concluded that there will be no increase in water surface elevations because of the improvement. Based on the information provided and a review of the procedures to be used, as well as a site visit, the Department concurs with the conclusion of the Design Report and has determined that the project complies with COMAR 26.17.04.

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 by the GIS screening process.

During the public notice comment period, Department of Natural Resources (DNR) commented on the proposed project. On February 28, 2025, DNR stated that no in-stream work is permitted from March 1st through May 31st of any given year and encourage the applicant to adhere to all appropriate best management practices for sediment and erosion control during all phases of work at this site.

HISTORIC PRESERVATION

The application was also screened using GIS for historical and archeological resources. In the GIS screening process, it was determined that the project might potentially impact archeological resources. Maryland Historical Trust (MHT) reviewed the application. On September 30, 2024, MHT determined that the project would not impact any archeological resources.

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. Since the mitigation requirement is only 81 square feet of emergent nontidal wetland, the Mitigation and Technical Assistance Section determined on December 20, 2024, to

waive the permittee mitigation requirement for this project. Instead, the mitigation will be completed as part of the Department's programmatic mitigation.