

SUMMARY OF THE BASIS FOR DECISION

Wicomico Regional Airport

Name of Applicant

21-NT-2114/202162246

Application Number

Mieko Camp

Project Manager

October 28, 2024

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 Wicomico Regional Airport, which includes extending Runway 32, removing airspace obstructions, and upgrading airport facilities and infrastructure, 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. These activities will permanently impact 211,482 square feet (4.85 acres) of emergent nontidal wetlands, 245,635 square feet (5.64 acres) of forested nontidal wetlands, and 852,981 square feet (19.58 acres) of the 25-foot nontidal wetland buffer as well as to permanently convert 595,703 square feet (13.68 acres) of forested nontidal wetlands to emergent nontidal wetlands.

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 Daily Times* on May 7, 2023.

A public informational hearing was requested by the applicant; this hearing was held virtually via Google Meet on June 28, 2023. During the public comment period, one adjacent property owner expressed concerns about impacts to wildlife, which will be addressed in the ‘Endangered Species’ section of this Summary of the Basis for Decision.

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, Wicomico County makes the decision about appropriate land use of the property. The project's purpose is to accommodate current and anticipated users at Wicomico Regional Airport and to comply with Federal Aviation Administration standards (Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 2d; Exhibit '1', "Project Purpose and Need" submitted by Wetland Studies and Solutions, Inc. on April 5, 2022).

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.

Wicomico Regional Airport is an existing facility that is currently operational; therefore, no alternative sites were examined (Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 6). Multiple alternative design scenarios were considered for this project (Wicomico Regional Airport Environmental Assessment, April 2021):

- (1) Extension of Runway 5-23. This alternative would require acquisition and conversion of prime farmland and several privately-owned parcels. Additionally, public roads would become part of the extended runway protection zone and would create new conditions that do not comply with Federal Aviation Administration standards.
- (2) Extend Runway 14 and parallel taxiway to the northwest by 1,400 feet. This alternative would require the acquisition of 56 acres and demolition of three private residences; rerouting two private roads; 13 acres of tree removal; 1 acre of wetland impacts; and 200 linear feet of stream impacts.
- (3) Extend Runway 32 and parallel taxiway to the southeast by 1,400 feet. This alternative would require the acquisition of 30 acres, most of which is owned by the Maryland Department of Natural Resources and The Nature Conservancy; 48 acres of tree removal; and 31 acres of wetland impacts. This is the preferred alternative.
- (4) Extend Runway 14 to the northwest by 200 feet and Runway 32 to the southeast by 1,200 feet. This alternative would require the acquisition of 49 acres and demolition of one private residence; 45 acres of tree removal; 35 acres of wetland impacts; and 200 linear feet of stream impacts. This alternative would not meet the project goal due a reduction of usable runway length resulting from runway safety area requirements.

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.

Avoidance of nontidal wetland resources was not feasible due to extensive wetlands located on and around the existing airport. The use of selective obstruction removal within the wetland of special state concern will result in the topping of 30 trees and has avoided the conversion (from forested to emergent) of 14 acres of wetland of special state concern and 7.6 acres of the expanded 100-foot wetland buffer (Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 2b and ‘Wetland Permit Exhibits’ prepared and revised by Delta Airport Consultants, Inc.) A revision of the project’s scope further reduced permanent impacts to forested wetlands by 0.4 acre. Proposed structures are concentrated within the existing industrial park to utilize existing infrastructure (memo submitted by Wetland Studies and Solutions, Inc. on March 6, 2023).

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 Wicomico County 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 Wicomico County 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.

Stormwater management will be addressed with both structural and environmental site design (ESD) best management practices (BMPs) recommended in the 2000 Maryland Stormwater Management Design Manual. Preliminary practices selected for this project include, but are not limited to disconnection of runoff using grass swales and stormwater basins (memo submitted by Wetland Studies and Solutions, Inc. on November 7, 2022).

The project lies within the Nassawango Creek 2 Watershed, which has no assimilative capacity remaining. In a memo dated May 12, 2023, MDE's Tier II Implementation Coordinator stated that the applicant has satisfied the Antidegradation Tier II Review.

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.

The GIS screening indicated the potential for rare, threatened, or endangered species within the project area. In an e-mail dated April 20, 2023, the Department of Natural Resources expressed concerns about impacts to rare plants within the Horsebridge Creek Bogs Wetland of Special State Concern. The scope of tree removal within the wetland of special State concern was reduced from 619,763 square feet (14.2 acres) to 30 individual trees. The individual trees will be accessed by foot and topped using hand-held equipment. This alternative method of obstruction removal within the wetland of special State concern minimizes risk to rare plants.

During the public comment period, an adjacent property owner expressed concerns about impacts from tree clearing to wildlife, particularly egrets, herons, and bald eagles. The Project Manager contacted the Maryland Department of Natural Resources regarding these concerns. In an email dated June 2, 2023, the Maryland Department of Natural Resources stated that there are no records of heron or egret colonies on or near the project site. Additionally, it was noted that since the downlisting of the species, bald eagle nests are not routinely surveyed; the applicant should adhere to the national bald eagle management guidelines that were developed by the U.S. Fish and Wildlife Service.

HISTORIC PRESERVATION

The application was also screened using GIS for historical and archeological resources. The screening indicated the potential for impacts to historic or archeological resources. The project was referred to the Maryland Historical Trust (MHT) for further review. The Maryland Historical Trust determined that the project would have no adverse effect on historical properties (memo dated January 24, 2022 from MHT to the Department).

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 total proposed permanent nontidal wetland impacts include 211,482 square feet emergent wetland, 245,635 square feet forested wetlands, and conversion of 595,703 square feet forested wetland to emergent wetlands. Mitigation will be required at a 1:1 mitigation to impact ratio for the emergent wetland loss and conversion loss, and a 2:1 mitigation to impact ratio for the forested wetland loss, resulting in a mitigation requirement of 1,298,455 square feet nontidal wetland, including at least 1,086,973 square feet forested wetland. As stated in the Mitigation Plan submitted November 11, 2022, by Wetland Studies and Solutions, Inc., mitigation will be satisfied through purchase of wetland credits at the Maple Dam Mitigation Bank and the Walnut Tree permittee-responsible mitigation site. The Permittee purchased 576,734 square feet nontidal wetland credits from the Maple Dam Mitigation Bank on August 15, 2023. The Permittee will provide at least 721,721 square feet forested nontidal wetland mitigation at Walnut Tree. The proposed impacts are within two adjacent State-designated 8-digit watersheds: Lower Wicomico River and Nassawango Creek. The Walnut Tree site is within the Lower Wicomico River watershed. The Maple Dam Mitigation site has an approved Primary Service Area that includes the Lower Wicomico River watershed and a Secondary Service Area that includes the Nassawango Creek watershed. Both mitigation sites will be monitored to ensure they meet ecological performance standards and will be protected through a site protection instrument. The Department has determined that mitigation will offset functions lost due to the wetland impacts. As noted in Kelly Neff's email dated July 20, 2023, the Mitigation and Technical Assistance Section determined that the proposed mitigation is acceptable.