CHAPTER SIX

STATE REGULATIONS PERTAINING TO FLOODPLAINS

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A. Introduction

Under COMAR 26.17.04, the Wetlands and Waterways Program of the Water Management Administration (WMA) of MDE has set forth regulations governing activities impacting State nontidal waterways, including their 100-year floodplains. State jurisdiction does not apply to situations in which only tidal flooding is involved. However, if the primary source of flooding is nontidal according to the FIS, State jurisdiction may extend into areas that are normally tidal.

For any change of the course, current, or cross-section of a stream, waterway, or body of water, including dams and ponds, a State Waterway Construction Permit must be obtained. Additionally, activities which impact nontidal wetlands are governed by COMAR 26.23.01, for which a Nontidal Wetlands Permit or Letter of Authorization must be obtained. These permits have been combined into a Joint State/Federal Application process, which also includes a U. S. Army Corps of Engineers permit review, if required. The review for all required permits is simultaneous, based on the information supplied in the Joint Application.

State analysis for the Waterway Construction Permit looks at the entire floodplain, based on ultimate build-out under existing zoning. The floodway is not considered a separate part of the floodplain, as required under the NFIP regulations. However, the State does not wish to be in a position of issuing a permit in cases where local approval cannot be granted. Activities impacting the floodway will be coordinated with the NFIP State Coordinating Office of MDE so that local issues can be resolved. In cases where problems exist in the issuance of a local permit, the local government should inform MDE.

JOINT FEDERAL / STATE APPLICATION FOR THE ALTERATION OF ANY FLOODPLAIN, WATERWAY, TIDAL OR NONTIDAL WETLAND IN MARYLAND

FOR AGENCY USE ONLY
Application number_____ Date Determined Complete_____
Date received by State_____ Date(s) Returned_____
Date received by Corps_____
Type of State permit needed_____ Date of Field Review_____
Type of Corps permit needed_____ Agency Performed Field Review_____

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*Submit 1 original and 4 copies (5 total) of this form, required maps and plans to the Regulatory Services Coordination Office (address on page 2 of this form).
*Any application which is not completed in full or is accompanied by poor quality drawings may be considered incomplete and will result in a time delay to the applicant.

Please check one of the following:

RESUBMITTAL:____ APPLICATION AMENDMENT:____ MODIFICATION TO AN EXISTING PERMIT:____
JURISDICTIONAL DETERMINATION ONLY____ APPLYING FOR AUTHORIZATION____
PREVIOUSLY ASSIGNED NUMBER (RESUBMITTALS AND AMENDMENTS)_____
DATE_____

I. APPLICANT INFORMATION:

APPLICANT NAME: FAX NO.: (___) _____
A. Name: _____ B. Daytime Telephone: (____) _____
C. Company: _____
D. Address: _____
E. City: _____ State: _____ Zip: _____

AGENT/ENGINEER INFORMATION: FAX NO.: (___) _____
A. Name: _____ B. Telephone: (____) _____
C. Company: _____
D. Address: _____
E. City: _____ State: _____ Zip: _____

ENVIRONMENTAL CONSULTANT: FAX NO.: (___) _____
A. Name: _____ B. Telephone: (____) _____
C. Company: _____
D. Address: _____
E. City: _____ State: _____ Zip: _____

CONTRACTOR (If Known): _____
FAX NO.: (___) _____
A. Name: _____ B. Telephone: (____) _____
C. Company: _____
D. Address: _____
E. City: _____ State: _____ Zip: _____

PRINCIPAL CONTACT: FAX NO.: (___) _____
A. Name: _____ B. Telephone: (____) _____
C. Company: _____
D. Address: _____
E. City: _____ State: _____ Zip: _____

Federal/State Joint Permit Application

B. General Permits (Proposed)

General permits are proposed to be issued for certain classes of minimal impact activities, provided certain conditions and best management practices are observed. Normally, an individual permit would not be required for these classes of activities. General permits may be issued regionally or Statewide to the general public for activities which are deemed to have minimal impact.

The General Permit will contain a list of the activities authorized, the conditions and best management practices which apply, limitations which constitute an individual authorization, notification requirements, and the areas in which the General Permit is applicable. In some instances, MDE will require notification before commencing work to determine if a Letter of Authorization or a Permit will be required.

C. Letters of Authorization

Letters of Authorization are issued individually for activities which will cause only minimal adverse environmental and hydraulic effects and only if impacts to the waters and wetlands of the State are minimized. The activity must comply with specific conditions and best management practices. In order to qualify, the project must not require public notice and must be judged cumulatively to have a minimal adverse impact.

If nontidal wetlands are not impacted, the following activities may be issued Letters of Authorization: temporary crossings, maintenance and repair of existing structures, minimal clearing and grading (less than 100 cubic yards of fill or less than 5,000 square feet of disturbed area), sediment removal, and waterway and wetland mitigation projects. In some instances, a Regional Letter of Authorization may be issued to local jurisdictions and entities to regularly and periodically conduct specified activities Statewide or regionally.

D. Issued Permits

1. Waterways

A permit or a Letter of Authorization must be issued to construct, alter, or repair a dam, reservoir, pond, or other waterway obstruction. Any change in the course current or cross-section of waterways or bodies of water in the State, including intermittent streams, but not tidal waters, requires a waterway construction permit, as does the 100-year frequency floodplain of all waterways.

Agricultural drainage systems with a total drainage area of 2,500 acres or less are exempted from the permit requirement. Emergency repairs may be conducted prior to obtaining a permit provided they are the minimum necessary to safeguard life and property and WMA is notified within 24 hours. In conducting emergency repairs, requirements of an issued permit shall apply.

2. Structures

New or substantially improved residential or commercial structures, or new additions which expand the footprint of an existing structure, in the floodplain of waterways must obtain a permit and have the lowest floor elevated one foot above the 100-year flood elevation. Minor repairs and maintenance are exempt from the permit requirement. A permit may be issued to floodproof an existing structure as a flood protection retrofit.

Additions to existing structures are evaluated on a case by case basis and may require full elevation. The addition must be permitted by the local jurisdiction and have crawl space areas below flood elevation vented and all electrical and mechanical devices elevated one foot above the 100-year flood elevation.

Accessory structures, including attached garages used for parking of vehicles and limited storage, will meet the same requirements for the State permit as outlined in the Model Ordinance for the local permit. A necessary condition for issuance of the State permit will be proper local approval including documentation with the Nonconversion Agreement, recordation of the Declaration of Land Restriction or deed restriction, and variance issuance, as necessary.

3. Culverts and Bridges (Crossings)

Culverts generally must be limited to 150 feet and must include provisions for fish passage by having at least one cell placed at least one foot below the invert of the waterway. Erosion must be minimized by providing adequate protection at culvert inlets and outlets. Such protection shall not block passage of aquatic life during low flow conditions.

Bridges must completely span waterways which have a width from top-of-bank to top-of-bank of 80 feet or less. Adequate protection to prevent damage by erosion and scour must be designed into piers and abutments.

In all cases, adverse impacts must be minimized to the watercourse and to adjacent natural resources.

4. Dams and Ponds

Maryland Law, Title 5 of Environment Article, Annotated Code of Maryland, requires that a permit be obtained to construct, reconstruct, or repair any pond, reservoir, or dam. Applications for new dams are reviewed to ensure that the project "provides for greatest feasible utilization of the waters of the State and adequately preserves public safety and general public welfare".

Dams are classified according to their potential to cause loss of life or property damage if they should fail. The three categories are: high hazard, intermediate (or significant) hazard, and low hazard.

In accordance with the established process, certain small ponds can be reviewed by the local Natural Resource Conservation Service (NRCS) office in each county. However, if any of the following apply, a permit from the Dam Safety Division of MDE is required:

1. Drainage area of the pond is greater than 640 acres;
2. Dam embankment height is greater than 20 feet (from top of dam to the lowest point on the upstream slope ; or
3. Pond is an intermediate or high hazard structure.

All existing dams in Maryland must be maintained and operated in a safe condition. The owner has responsibility to make periodic inspections and perform routine maintenance and repairs. The Dam Safety Division conducts periodic inspections of Maryland dams on a a regular cycle determined by their hazard classification.

E. Application Requirements and Evaluation

The applicant shall submit the Joint State/Federal Application to the Permit Processing Center in MDE with the appropriate information completed. All local land use requirements, including zoning, floodplain management criteria, stream buffers, flood protection setbacks, nontidal wetland criteria, special exemptions, variances, conditional uses, or other approvals necessary for the location and operation of the proposed project must be satisfied. The applicant is responsible for obtaining other State, federal, or local permits that may be required for the project.

An avoidance and minimization analysis must be submitted, including the public benefits and need for the project, and a mitigation plan, if impacts cannot be avoided. Projects with a hydraulic impact must develop calculations of changes in the elevation and boundaries of the 100-year frequency flood event with the project in place. An Environmental Impact Statement may be required with submittal of plans.

Projects that increase the magnitude or frequency of flooding on other properties may not be approved unless the area subject to additional risk is purchased, placed in designated flood easement, or addressed by other means acceptable to WMA. Proposed projects must be designed to avoid impacting water resources of the State. If avoidance is not possible, impacts shall be minimized to the maximum extent practicable and mitigated for if necessary. Projects which impact fish passage, terrestrial and aquatic habitats, and designated Scenic and Wild Rivers, are not in the public interest, and are unlikely to be approved.

An application will be acknowledged upon receipt. Within 45 days the applicant will be informed as to whether the application is complete or if additional information will be required. Requirement that a notice be sent to adjacent property owners and the public, and a public informational hearing scheduled for more involved projects may extend the time before a permit may be issued.