Maryland Department of the Environment

Permit Review and Restoration Projects

Presented by:

Wetlands and Waterways Program

Maryland Department of the Environment

Habitat Goal Implementation Team Meeting

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Waterways Construction Act of 1933

Tidal Wetlands Act of 1970

Nontidal Wetlands Act of 1989

Waterways Construction Act of 1933

- Recognizes that manmade changes to a waterway diminish its course, current or cross-section
- Evaluates activities in a waterway or its 100-year floodplain
- Prevents flooding on upstream/downstream property
- Maintains fish habitat and migration
- Protects waterway from erosion

Waterway Construction Act

Best Interests of State

- Harm to State Scenic and Wild River
- Blockage to fish passage
- Whether failure of new impoundment would likely result in loss of life or high value property
- Aquatic or terrestrial habitat and related flora and fauna
- Increase risk of flooding to other property owners

Waterway Construction Act cont.

- Construction or substantial improvement to structure below 100-year flood elevation

- Water quality standards

Tidal Wetlands Act of 1970

- Maps State's tidal wetland resources
- Establishes regulatory protection program
  - State wetlands include all open water and vegetated tidal wetlands below mean high water
  - Private wetlands include all vegetated tidal wetlands above mean high water
  - Manages wetlands to provide reasonable use while ensuring essential resource protection

Tidal Wetlands Act

Public Interest

- Ecological
- Economic
- Developmental
- Recreational
- Aesthetic values
- Water dependency
- Reduce flood damage and trap sediment

Tidal Wetlands Act cont.

Public Interest

- Enhancements of aquatic environment
- Consistency with other land use plans/laws

- Natural, scenic, and historic property values
- Characteristics of fill material
- Marine commerce
- Avoidance and minimization
- Navigation

Tidal Wetlands Act cont.

Public Interest

- Shore erosion
- Habitat
- Alterations to littoral drift
- Stormwater and waste
- Danger from natural hazards

Nontidal Wetlands Act of 1989

- Declares a goal of “no net loss” of wetland acreage and function and to strive for a gain over time
- Other goals of the Nontidal Wetlands Protection Act
  - Protect waters of the State
  - Prevent further resources degradation and losses by regulation all activities impacting nontidal wetlands
  - Expedite application process by coordinating review and imposing deadlines

Nontidal Wetlands Act

- **Water dependent and require access to nontidal wetland**
- **No practicable alternative**
- **Avoidance and minimization**

Nontidal Wetlands Act cont.

- Water quality standards
- Economic value of activity/ demonstrated public need vs. ecological and economic value of wetland; ability of wetland to continue to provide identified functions and benefits to general public
- Compliance with best management practices
- Degradation and loss of wetlands
- Mitigation

Sources of Conflict

1) Nature of the project:

   Goals, Objectives, Site

2) Conflicting resource goals:

   Site, Other Requirements, Design

3) Method of accomplishing the project:

   Design, Construction, Post-construction

4) Functions of the existing resource:

   Site

Goals, Objectives

- What are the project goals, need for project, and how will this particular project accomplish the goal?
- Is the site degraded and a good candidate for meeting project goals?
- What are the tradeoffs for this project?

Design

- Does the design adequately consider site-specific characteristics, including hydrology?
- Are there impacts to regulated resources? If so, are the impacts:
  - Considered harmful to existing resources, whether onsite or offsite?
- Does the design address the cause of the problem?

Design cont.

- In conflict with other requirements, conservation goals, standards, or laws?

- Necessary to accomplish the goals of the project?

- Is a structure requiring active operation required? If so, who will maintain and operate it? What may occur if the structure fails or is operated improperly?

Construction Techniques

- **1) Will the construction techniques adversely affect other resources or result in violations of other requirements?**
- **2) Will undesirable species be introduced as a result of construction techniques? How will undesirable species (e.g. Phragmites) be managed?**
- **3) Where will equipment be staged and how will it be operated?**
- **4) Where/how will excavated material be stored or disposed of?**

Avoidance and Minimization

- **Can the project be done elsewhere on the property with fewer adverse impacts?**
- **Is the project over-designed? Can the project be designed with fewer or smaller structures or disturbance?**
- **Are there other construction techniques that can accomplish the project purpose with fewer impacts?**
- **Why are the alternatives with fewer adverse impacts not practicable for accomplishing the project purpose?**

Post-construction

- Is there a monitoring and remediation plan in place?
- What are the consequences if a project fails?
- Are there adequate adaptive plans in place to address potential project failure?

“Red Flags”

Alteration of Water Levels

Increase may:

- Raise flood risk on adjacent property
- Change existing plant community

Decrease may:

- Discharge flows at erosive velocities
- Transport stored sediment downstream and in floodplain

Examples of Required Information

- Projects goals and objectives
- Project narrative and justification
- Alternatives analysis
- Hydrologic and hydraulic analysis
- Notification/permission of adjacent property owners
- Water quality data

Examples of Required Information cont.

- Wetland determination/delineation
- Soil properties
- Sensitive species inventory
- Resource condition assessment
- Archeological/historic site inventory
- Bathymetric data

Examples of Required Information cont.

- Site plans
- Construction techniques
- Type of structure/material
- Extent of impact
- Revised design
- Source/disposal of fill material
- Pre-construction monitoring

Examples of Required Information cont.

- Approved erosion and sediment control plans
- Maintenance plan for operation of water control structure
- Post-construction monitoring and remediation plan

Other Coordination and Requirements

- Public notice, opportunity to provide public comment and request public hearing
- Local government agency approval
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- Maryland Historical Trust
- Time of year restrictions
- Use of special construction equipment or techniques

Other Coordination and Requirements cont.

- Appeal of permit decision by person with standing
- Documentation of landowner permission to conduct activity

Recommendations

Coordinate with regulatory agencies early before:

- **Submitting an application**
- **Applying for restoration funds based on a specific design vision or method**

Use Joint Evaluation process for soliciting comments and resolving issues with regulatory and stakeholder agencies

Prepare additional guidance on information requirements. Streamline requirements where appropriate.

Next Steps

Meet with agency restoration practitioners at JE meeting

Coordinate with other agencies on guidance for ditch/ephemeral stream identification

Discuss information requirements

Opportunities for early coordination

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