



Department of the Environment

# WETLANDS AND WATERWAYS PROGRAM FUND – FISCAL YEAR 2017 –

Prepared for:

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Maryland General Assembly

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Maryland General Assembly

House Environment & Transportation Committee

House Appropriations Committee

Senate Education, Health and Environmental Affairs Committee

Senate Budget and Taxation Committee

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**WETLANDS AND WATERWAYS PROGRAM FUND  
ANNUAL REPORT FOR FISCAL YEAR 2017**

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# **WETLANDS AND WATERWAYS PROGRAM FUND**

## **REQUIREMENT**

Subsection 5-203.1(d) of the Environment Article, Annotated Code of Maryland, states, “On or before December 31 of each year, in accordance with § 2–1246 of the State Government Article, the Department shall prepare and submit an annual report to the House Environmental Matters Committee, the House Appropriations Committee, the Senate Education, Health, and Environmental Affairs Committee, and the Senate Budget and Taxation Committee on the Wetlands and Waterways Program Fund, including an accounting of financial receipts deposited into the Fund and expenditures from the Fund.” This report covers the period from July 1, 2016 through June 30, 2017.

## **CHAPTER 142 OF THE 2008 LAWS OF MARYLAND**

Chapter 142 of the 2008 Laws of Maryland (House Bill 1056) established application fees to fund the State’s Wetlands and Waterways Regulatory Program (Program) administered by the Maryland Department of the Environment (Department or MDE). This Program administers three distinct, but interrelated statutes within the Environment Article: Title 5, Subtitle 5 (Waterway Construction); Title 5, Subtitle 9 (Nontidal Wetlands), and Title 16 (Tidal Wetlands and Riparian Rights). Each of these statutes plays a vital role in maintaining the health of the Chesapeake and Atlantic Coastal bays. The functions and values of the natural resources protected by these statutes include water quality enhancement; fish and wildlife habitat and migration; natural shoreline protection; flood protection; recreational opportunities and aesthetics.

The law establishes application fees for permits and licenses issued by MDE or the Board of Public Works (Board), as well as exemptions from the application fees for specific activities. The law also establishes a refund process for certain applications that are not processed according to specified time periods. Revenue generated by these fees is deposited into the Wetlands and Waterways Program Fund (Fund), a special fund created by the law and dedicated to the administration of the Program. Specific uses of the Fund include:

- The issuance of authorizations by the Department under §§ 5–503, 5–906, 16–202, 16–302, and 16–307 of the Environment Article, Annotated Code of Maryland;
- The issuance of wetlands licenses by the Board under § 16–202 of the Environment Article, Annotated Code of Maryland;
- The management, conservation, protection, and preservation of the State’s wetlands and waterway resources; and
- Program development associated with Title 5 and Title 16 of the Environment Article, Annotated Code of Maryland, as provided by the State budget.

The law requires MDE to prioritize the use of the Fund to improve the level of service to the regulated community, and identify and implement measures to reduce delays and duplication in the administration of the permit application review process.

## **WETLANDS AND WATERWAYS FUNDING WORK GROUP**

As required by HB 1056 of 2008, MDE convened a Work Group of interested stakeholders representing a broad spectrum of interests to assess whether the Program successfully improved the level of service to the regulated community. Over a period of 11 weeks, the Work Group reviewed MDE's accomplishments in the context of the criteria established in the law. The consensus of the Work Group was that MDE successfully met the intent of the law. The Work Group also analyzed the funding needs of the Program and determined that the revenues generated by HB 1056 of 2008 did not fully support the 34 positions envisioned by the legislation. Furthermore, the Work Group determined that the structure of the fee schedule was problematic and the amount of the fees was not adequate to support an effective program. Based on the programmatic review required by the legislation, the Work Group recommended that MDE pursue legislation to amend the law, including the fee structure.

## **CHAPTER 722 OF THE 2012 LAWS OF MARYLAND**

House Bill 1411 (HB 1411), entitled Wetlands and Waterways Program Fees, was signed into law on May 22, 2012. This legislation made significant changes to the fees being charged by MDE for applications for Tidal Wetlands Licenses and Permits and Nontidal Wetlands and Waterways Letters of Authorization and Permits. The modified fee schedule became effective July 1, 2012.

In general, the bill: 1) changed the definition of a major project; 2) defined the terms "Residential Activity" and "Noncommercial Activity"; 3) specified that all noncommercial residential activities meet the definition of a minor project; 4) established a special category of noncommercial, residential activities assessed a reduced fee; and 5) established a minimum compensation rate of \$2.50 per linear foot for cables, pipelines, or similar structures crossing State wetlands. Some of the benefits associated with the passage of the bill include reducing the financial burden on residential property owners; eliminating the additional charge for major projects impacting rare, threatened or endangered species, historical and archeological resources, and natural and recreational trout waters; and significantly reducing the number of applications that are classified as a "major project."

## **FEE STRUCTURE**

The major tenet of the regulatory program is avoidance and minimization of impacts associated with a project. Through its permit application review process, MDE attempts to first prevent wetland loss by requiring an applicant to evaluate project designs that will avoid wetland impacts. Based on this evaluation of alternatives, if MDE finds that impacts are unavoidable, the applicant is required to utilize the project design that will minimize the wetland impacts and provide appropriate mitigation for those impacts.

The application fee schedule attempts to further reduce impacts by providing financial incentives to the applicant. As proposed impacts increase, an escalating application fee schedule has been

established to ensure that each applicant exercises every opportunity to avoid impacts to the State's wetland and waterway resources. In general, all applications require a minimum application fee of \$750. Major projects (i.e., those that involve 5,000 square feet or more of permanent impact, are in an area identified as potentially impacting a Nontidal Wetland of Special State Concern or require a public notice) are assessed an additional fee of \$750 or more based on the impact area in acres. The actual fee schedules are presented in the following tables.

<b>FEE SCHEDULE A WETLANDS AND WATERWAYS PROGRAM APPLICATION FEES FOR MINOR AND MAJOR PROJECTS</b>		
<b>TYPE OF APPLICATION</b>	<b>AREA OF PERMANENT IMPACT</b>	<b>APPLICATION FEE (Dollars)</b>
MINOR PROJECT OR GENERAL PERMIT	<5,000 SQUARE FEET	750
MINOR MODIFICATION	<5,000 SQUARE FEET	250
MAJOR PROJECT	< 1/4 ACRE	1,500
	≥ 1/4 ACRE TO < 1/2 ACRE	3,000
	≥ 1/2 ACRE TO < 3/4 ACRE	4,500
	≥ 3/4 ACRE TO < 1 ACRE	6,000
	≥ 1 ACRE	7,500/ACRE
MAJOR MODIFICATION	≥ 5,000 SQUARE FEET	1,500
<b>FEE SCHEDULE B WETLANDS AND WATERWAYS PROGRAM APPLICATION FEES FOR CERTAIN MINOR PROJECTS<sup>(1)</sup></b>		
<b>PERMIT TYPE</b>	<b>PROJECT DESCRIPTION</b>	<b>APPLICATION FEE (Dollars)</b>
Tidal Wetlands	Installation of a boatlift on existing pilings	0
	Installation of an individual boatlift with 2 pilings	300
	Installation of a maximum of 6 pilings	300
	In-kind repair and replacement of structures <sup>(2)</sup>	300
	Installation of a fixed or floating platform, including finger piers, where the total platform (fixed and floating) and finger pier area does not exceed 200 square feet	300
	Replacement of an existing bulkhead where the replacement bulkhead does not exceed more than 18 inches channelward of the existing structure	500
Nontidal Wetlands and Waterways	Construction of a non-habitable structure that permanently impacts less than 1,000 square feet, such as a driveway, deck, pool, shed or fence	300
	In-kind repair and replacement of existing infrastructure	500
<b>Notes:</b>		
(1) Schedule B fees are <u>not</u> additive, but must be calculated on a complete and entire project. If a project consists of multiple activities, the higher application fee is applicable.		

Notes, Continued:

(2) If the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment, then the routine maintenance, repair, or replacement of a highway structure, pier, boathouse, structure on a pier, bulkhead, revetment, tidal impoundment dike, water control structure, above ground transmission facility, agricultural drainage ditch or highway drainage ditch is exempt from the application fee. A property owner that is uncertain about the regulatory requirements can contact MDE and schedule a pre-application meeting for guidance. If a property owner is uncomfortable proceeding with a project without an authorization from the Department, then the property owner can file an application and pay a \$300 application fee.

The law also identifies the following activities as being exempt from the requirement to pay application fees:

- Regulated activities conducted by the State, a municipal corporation, county, bi-county or multi-county agency under Article 28 of the Code or Division II of the Public Utilities Article, or a unit of the State, a municipal corporation, or a county;
- Performance of agricultural best management practices contained in a soil conservation and water quality plan approved by the appropriate Soil Conservation District;
- Performance of forestry best management practices contained in an erosion and sediment control plan prepared by a registered forester and approved by the appropriate Soil Conservation District;
- Stream restoration, vegetative shoreline stabilization, wetland creation, or other project in which the primary effect is to enhance the State's wetland or water resources;
- Aquaculture activities for which the Maryland Department of Natural Resources has issued a permit under § 4-11A-02 of the Natural Resources Article;
- Installation of a boatlift, hoist, or personal watercraft lift on existing pilings; and
- If the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment, the routine maintenance, repair, or replacement of a pier, boathouse, structure on a pier, bulkhead, revetment, tidal impound dike, water control structure, aboveground transmission facility, agricultural drainage ditch, or highway drainage ditch.

### **WETLANDS AND WATERWAYS PROGRAM FUND REVENUES**

The law establishes the Fund, which is administered by MDE. The Fund consists of:

- Application fees collected by the Department;
- Monetary compensation paid to the State in conjunction with a Wetlands License other than that compensation specified in § 16-205(c)(2) of the Environment Article, Annotated Code of Maryland;
- Money appropriated in the State budget to the Fund; and
- Investment earnings, interest, and any other money from any other source accepted for the benefit of the fund.

## **WETLANDS AND WATERWAYS PROGRAM FUND EXPENDITURES**

The law establishes a funding mechanism that complements a general fund appropriation to adequately support the Program. This funding strategy enabled MDE to restore the Program's workforce to historical levels necessary to effectively serve the public. This strategy also enhances MDE's resource management and conservation capabilities, and strengthens existing levels of constituent service, ensuring a more efficient and effective application review process for the regulated community. When the original law was enacted in 2008, it was estimated that the revenue generated by the application fees would fund 34 positions. With support from the Board, 34 positions were created and filled, and the employees are now serving the regulated community.

### **SUMMARY**

The Fund is a special fund created by Chapter 142 of the 2008 Laws of Maryland (House Bill 1056). The Fund began receiving revenue on July 1, 2008, the effective date of the law. The major sources of revenue for the Fund are application fees collected by MDE and monetary compensation paid to the State in conjunction with Tidal Wetlands Licenses. Variable year-end fund balances may occur due to a number of factors. Expenditures can be affected by staffing changes (i.e., vacancies and recruitment) and contractual project delays. The main factor affecting revenue is the number of permit applications received during the fiscal year. Consequently, the Department carefully monitors revenue and expenses.

The following table provides an accounting of revenues and expenditures in the Fund for the period July 1, 2016 through June 30, 2017.

**WETLANDS AND WATERWAYS PROGRAM FUND  
STATEMENT OF REVENUES AND EXPENDITURES  
FISCAL YEAR 2017  
July 1, 2016 - June 30, 2017**

<b>REVENUES</b>	
<b>Fund Balance as of June, 2016</b>	<b>\$954,189.07</b>
Fiscal Year 2017 Revenue (Application Fees)	1,124,762.50
Fiscal Year 2017 Revenue (Tidal Wetlands License Compensation Fees)	1,918,053.11
Fiscal Year 2017 Revenue (Marine Contractor Registration Fees)	111,075.00
Fiscal Year 2017 Revenue (Waterway Construction - Potomac River Compensation)	70,052.25
Fiscal Year 2017 Accrued Revenues	(44,104.10)
<b>Total Fiscal Year 2017 Revenues</b>	<b>\$4,134,027.83</b>
<b>EXPENDITURES</b>	
Total Fiscal Year 2017 Expenditures	3,028,090.90
<b>WETLANDS AND WATERWAYS PROGRAM FUND BALANCE AS OF JUNE 30, 2017</b>	<b>\$1,105,936.93</b>