

NOTICE

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410-222-7458

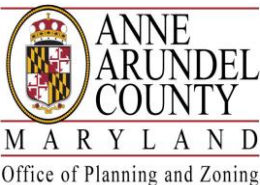
Protections and Minimum Mitigation Conditions for Nontidal Wetlands

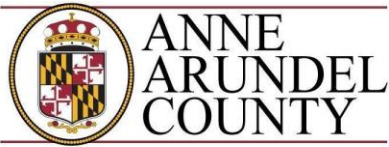
Anne Arundel County prohibits development in nontidal wetlands and their buffers. The purpose of this notice is to provide the general public, reviewing agencies, and the development community guidance for how nontidal wetlands and their buffers shall be protected through the development review process, and minimum conditions that the Planning and Zoning Officer shall consider if a modification for disturbance is granted.

Any questions regarding this notice should be forwarded to Lori Allen, Planning Administrator, at pzalle00@aacounty.org and 410-222-7458.

Steve Kaii-Ziegler,
AICP

*Planning & Zoning
Officer*





M A R Y L A N D

Office of Planning and Zoning

Steve Kaii-Ziegler AICP, Planning and Zoning Officer

MEMORANDUM

TO: MBIA, Review Agencies and the General Public

FROM: Steve Kaii-Ziegler AICP, Planning and Zoning Officer *SKZ*

SUBJECT: Protections and Minimum Mitigation Conditions for Nontidal Wetlands

DATE: March 6, 2020

The purpose of this policy is to minimize disturbance of nontidal wetlands and their buffers through the development review process, and provide minimum conditions that the Planning and Zoning Officer shall consider if a modification for wetland disturbance is granted.

Nontidal wetlands and their buffers enjoy strong protections in the Anne Arundel County Code. Section 17-2-102 states, "The policy of the County is to...(4) improve the quality of life through protection of the environment, including the prevention of air, water, light, and noise pollution, the prevention of soil erosion, and the preservation of natural features." Section 17-6-401 provides specific protections for nontidal wetlands and their buffers, stating, "Development may not occur within a nontidal wetland or within a 25-foot buffer of a nontidal wetland..." Additionally, on May 14, 2019, County Executive Stuart Pittman released a memo to the Planning and Zoning Officer titled, *Minimizing Environmental Impacts through the Modification Review Process*. The memo states that modifications "that would result in adverse environmental impacts will not be approved – even if accompanied by appropriate documentation – unless: 1) there is a clear and definitive showing that the alternate proposal will mitigate and minimize environmental impacts through the use of design alternatives; or 2) the requestor agrees to the conditions set forth by the Planning and Zoning Officer to secure mitigation of adverse environmental impacts."

For all of the above reasons, it shall be the policy of the Office of Planning and Zoning to prohibit any disturbance of nontidal wetlands and their buffers through the development process. Applicants must explore alternative site design options to avoid impacts to nontidal wetlands and their buffers. If, after considering alternative site design options, applicants believe disturbance of a nontidal wetland and, or a nontidal wetland buffer are unavoidable, they may apply for a modification. They must submit to the Office of Planning and Zoning, a permit authorizing wetland disturbance from the appropriate State or Federal agency, and must accompany this submission with justification, in writing, that the modification and additional actions (conditions) that will mitigate adverse environmental impacts satisfies each of the following criteria contained in Section 17-2-108:

- 1) practical difficulties or unnecessary hardship will result from strict application of this article;
- 2) the purposes of Article 17 of the Anne Arundel County Code, including minimization and mitigation of environmental impacts through the use of clustering or other available design alternatives to preserve the character of the impacted area, will be served by an alternative proposal;
- 3) the modification is not detrimental to the public health, safety, or welfare or injurious to other properties;

- 4) the modification does not have the effect of nullifying the intent and purpose of Article 17 of the Anne Arundel County Code, the Anne Arundel County General Development Plan, or Article 18 of the Anne Arundel County Code; and
- 5) the applicant has submitted written verification to the Office of Planning and Zoning that: a) the requested modification was disclosed and discussed at a community meeting; or b) all owners of property located within 300 feet of the affected property were mailed a notice explaining the reason for the modification, along with a copy of the request for modification.

If it is determined the modification request satisfies all criteria listed above, the Planning and Zoning Officer shall consider the following, minimum conditions for any modification to disturb nontidal wetlands and their buffers:

- 1) For Nontidal Wetlands of Special State Concern –
 - a. onsite wetland creation equal to three (3) times the square footage of wetlands disturbed;
 - b. onsite planting of native trees equal to three (3) times the square footage of wetlands disturbed;
 - c. offsite wetland creation or purchase equal to six (6) times the square footage of wetlands disturbed; or
 - d. offsite planting of native trees equal to six (6) times the square footage of wetlands disturbed.
- 2) For Nontidal Wetlands of Special State Concern Buffers –
 - a. onsite wetland creation equal to two (2) times the square footage of buffer disturbed;
 - b. onsite planting of native trees equal to two (2) times the square footage of buffer disturbed;
 - c. offsite wetland creation or purchase equal to four (4) times the square footage of wetlands buffer; or
 - d. offsite planting of native trees equal to four (4) times the square footage of buffer disturbed.
- 3) For Other Nontidal Wetlands –
 - a. onsite wetland creation equal to two (2) times the square footage of wetlands disturbed;
 - b. onsite planting of native trees equal to two (2) times the square footage of wetlands disturbed;
 - c. offsite wetland creation or purchase equal to four (4) times the square footage of wetlands disturbed; or
 - d. offsite planting of native trees equal to four (4) times the square footage of wetlands disturbed.
- 4) For Other Nontidal Wetland Buffers –
 - a. onsite wetland creation equal to the square footage of buffer disturbed;
 - b. onsite planting of native trees equal to the square footage of buffer disturbed;
 - c. offsite wetland creation or purchase equal to two (2) times the square footage of buffer disturbed; or
 - d. offsite planting of native trees equal to two (2) times the square footage of buffer disturbed.

All mitigation requirements should occur, if possible, within the same watershed of the project site. If these mitigation requirements differ from those prescribed by a wetland disturbance permit issued by the State of Maryland, the County shall require the greater of the two mitigation requirements. Additionally, any violations may result in more and separate mitigation requirements than those approved by the Planning and Zoning Officer.

This policy is not to be interpreted as implying that modifications will be automatically approved if the minimum conditions described herein are satisfied. Nor should it be interpreted as implying that modifications will be automatically approved if the applicant has obtained a permit authorizing wetland disturbance from the appropriate State or Federal agency. Additionally, applicants may propose alternative conditions and provide justification for why the alternative conditions are equally beneficial to the environment.

Finally, flexibility in this policy may be exercised in instances where need for disturbance is triggered by projects essential to the public good, such as: school, library and hospital construction projects; private or public stormwater projects; water quality improvement projects, utility infrastructure, or transportation infrastructure.

This policy shall be effective immediately.