

Nontidal Wetlands Regulations *and Mitigation*



Maryland Department of the Environment

What is mitigation ?

Mitigation is the creation, restoration or enhancement of nontidal wetlands that were, or will be lost, due to regulated or agricultural activities.

Creation is establishing a nontidal wetland on an upland site. Restoration is establishing nontidal wetlands on former nontidal wetlands sites. Enhancement is providing additional protection to, or improving the functions of, a nontidal wetland.

Maryland has adopted the goal of achieving no net loss of its nontidal wetland resources. Thus, any loss of nontidal wetlands after December 31, 1990, regulated under state law must be offset by mitigation. The Department of the Environment (MDE) may accept monetary compensation if it determines that mitigation is not a feasible alternative.



What activities are exempt from mitigation ?

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| <ul style="list-style-type: none"> • Forestry activities • Ongoing agricultural activities conducted in nontidal wetlands before December 31, 1990 • Activities in farmed nontidal wetlands that are inundated for less than 15 days during the growing season (as determined by MDE) • Activities that impact less than 5,000 square feet of nontidal wetland and buffer with no significant plant and wildlife value • Activities in isolated nontidal wetlands of less than one acre and having no significant plant and wildlife value • Repair and maintenance of serviceable structures | <ul style="list-style-type: none"> • Projects that impact less than two acres of farmed nontidal wetlands that are inundated for 15 days or more during the growing seasons (as determined by MDE) • Activities that only impact the buffer or expanded buffer • Mowing or other forms of vegetation control on existing rights-of-way • Landscape management in nontidal wetlands, buffer or expanded buffer • Soil investigations • Perc tests • Survey markers or survey monuments • Other similar activities with minimal impacts as approved by MDE |
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What are the mitigation requirements ?

Nontidal wetland losses shall be replaced by creating, restoring or enhancing nontidal wetlands at the following ratios:

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| <p>1:1 • Emergent nontidal wetlands</p> <p>2:1 • Scrub-shrub and forested nontidal wetland</p> <p>3:1 • Scrub-shrub and forested nontidal wetlands of special state concern</p> | <ul style="list-style-type: none"> • Farmed nontidal wetlands • Emergent nontidal wetlands of special state concern |
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- Locate mitigation sites preferably onsite and connected to existing nontidal wetlands, waterways or 100-year flood plains
- Select mitigation sites on upland sites which have undergone disturbance
Monitor the mitigation project for five years

- Provide for the long-term protection of mitigation projects
- File a mitigation performance bond (the bond shall be released when construction of the mitigation project has been completed and approved by (MDE)

How does a person conducting an agricultural activity meet the mitigation requirements ?

- Mitigate for the loss of nontidal wetlands within three years unless the Department of Agriculture has determined that there is an economic hardship
- Develop, in consultation with the Soil Conservation District (SCD), a mitigation component of the soil conservation and water quality plan for MDE review and SCD approval

The benefits provided by best management practices are considered by MDE when determining the extent of mitigation.

How does a person conducting a regulated activity meet the mitigation requirements ?



The applicant will be required to mitigate for nontidal wetland losses by taking the following steps:

- Step 1:** Submit a mitigation plan or monetary compensation proposal (part of the permit application) for review and approval by MDE.
- Step 2:** Submit a mitigation bond to MDE within 60 days of approval of the mitigation plan.
- Step 3:** Implement the mitigation plan.
- Step 4:** Bond is released after construction of the mitigation project is approved by MDE.
- Step 5:** Monitor the mitigation project for five years.
- Step 6:** Protect in perpetuity the mitigation project site.

Is more information available ?

The following brochures and information sheets are available, free, from the Water and Science Administration, Nontidal Wetlands & Waterways Division, 1800 Washington Blvd., Baltimore, MD 21230, (410) 537-3768.

- Nontidal Wetlands Regulations and Agriculture
- Nontidal Wetlands Regulations and Aquaculture
- Nontidal Wetlands Regulations and Forestry
- Nontidal Wetlands Regulations and Development Activities
- Nontidal Wetlands Regulations and the Property Owner
- Nontidal Wetlands Regulations and Mitigation
- Nontidal Wetlands Regulations and Mitigation Bonding
- Nontidal Wetlands Classifications
- The Values of Nontidal Wetlands
- The Nontidal Wetlands Protection Program
- Nontidal Wetlands of Special State Concern
- Nontidal Wetlands Documents
- Are There Wetlands On My Farm?
- How to Recognize a Nontidal Wetland
- Are There Wetlands On My Property? - A Guide For the Developer