

Maryland Department of the Environment Application for Mitigation Bank Approval - Instructions

July 21, 2023

A mitigation bank sponsor proposing to create a tidal or nontidal wetland or waterway mitigation bank in Maryland must complete and submit a “Maryland Department of the Environment Application for Mitigation Bank Approval” (Mitigation Bank Application) to the Maryland Department of the Environment (Department) to start the bank review process.

All proposed nontidal wetland mitigation banks must go out on public notice, allowing the opportunity for public review and comment, as stated in the House Bill 797 Maryland’s Nontidal Wetlands - Nontidal Wetland Mitigation Banking and the U.S. Army Corps of Engineers/Environmental Protection Agency Mitigation Rule 33 CFR Part 332 and 40 CFR Part 230 (Federal Mitigation Rule). To align with the requirements of the Federal Mitigation Rule, a public notice is completed during the prospectus stage for all mitigation banks. The completed Mitigation Bank Application must be submitted to kelly.neff@maryland.gov as part of the prospectus submission before the project can be put on public notice.

Applicants are advised to obtain information and guidance on the mitigation bank review process prior to submitting the Mitigation Bank Application by contacting the Mitigation and Technical Assistance Section (Mitigation Section) of the Nontidal Wetlands Division at 410-537-4018 or Kelly.neff@maryland.gov.

In addition to providing the information requested in this application, be sure to include all the information discussed with the Mitigation Section. The prospectus will not be considered complete, and the proposed mitigation bank will not be placed on public notice, unless this application is complete, and the certification signature block is signed by the landowner. Additional information is available at the website:

<https://mde.maryland.gov/programs/water/WetlandsandWaterways/AboutWetlands/Pages/mitigationbanks.aspx>

A “Joint Federal/State Application for the Alteration of any Floodplain, Waterways, Tidal or Nontidal Wetland in Maryland,” (JPA) including a wetland and waterway delineation, will be required for any temporary or permanent impacts proposed to tidal or nontidal wetlands and the 25-foot nontidal wetland buffer, nontidal waterways or the nontidal 100-year floodplain. This JPA will generally be submitted with the draft mitigation banking instrument and will be required prior to commencing regulated impacts under an approved bank.

**MARYLAND DEPARTMENT OF THE ENVIRONMENT APPLICATION FOR
MITIGATION BANK APPROVAL**

Please provide the following information:

MITIGATION BANK NAME: _____

DATE: _____

MITIGATION BANK TYPE:

Please check all that are applicable:

NONTIDAL WETLAND MITIGATION:

TIDAL WETLAND MITIGATION:

STREAM MITIGATION:

1. APPLICANT INFORMATION

BANK SPONSOR NAME:

Name: _____ Daytime Telephone: _____

Company: _____ Email Address: _____

Address: _____

City: _____ State: _____ Zip: _____

AGENT/ENGINEER INFORMATION:

Name: _____ Daytime Telephone: _____

Company: _____ Email Address: _____

Address: _____

City: _____ State: _____ Zip: _____

ENVIRONMENTAL CONSULTANT:

Name: _____ Daytime Telephone: _____

Company: _____ Email Address: _____

Address: _____

City: _____ State: _____ Zip: _____

PRINCIPAL CONTACT:

Name: _____ Daytime Telephone: _____

Company: _____ Email Address: _____

Address: _____

City: _____ State: _____ Zip: _____

2. PROJECT DESCRIPTION

Provide a written description of the project:

3. PROJECT LOCATION

County: _____ City: _____

Name of waterway/closest waterway: _____

Site address or location:

Directions from nearest intersection of two state roads: _____

Latitude _____ Longitude _____

CERTIFICATION: Application is hereby made for approval of the work described in this Mitigation Bank Application. I hereby designate and authorize the agent named above to act on my behalf in the processing of this Mitigation Bank Application and to furnish any information that is requested. I certify that the information on this Mitigation Bank Application and on the attached plans and specifications is true and accurate to the best of my knowledge and belief. I understand that any of the agencies involved in authorizing the proposed works may request information in addition to that set forth herein as may be deemed appropriate in considering this proposal. I grant permission to the agencies responsible for approval of this mitigation bank, or their duly authorized representative, to enter the project site for inspection purposes during working hours. I will not begin work in nontidal wetlands, 25-foot nontidal wetland buffers, waterways, floodplains, or tidal wetlands without the appropriate authorizations. All information, including Mitigation Bank Application and related materials, submitted to the Department may be subject to public disclosure consistent with the Maryland Public Information Act, §4-101 et seq., General Provisions Article of the Maryland Code. Mitigation Bank Applications and approved Mitigation Bank Instruments will be available to the public. I understand that I may request that additional required information be considered confidential under applicable laws. I further understand that failure of the landowner to sign the application will result in the application being deemed incomplete.

LANDOWNER MUST SIGN: _____ DATE: _____

PRINTED NAME OF LANDOWNER: _____

ADDITIONAL INFORMATION:

A “Joint Federal/State Application for the Alteration of any Floodplain, Waterways, Tidal or Nontidal Wetland in Maryland,” (JPA) including a wetland and waterway delineation, will be required for any temporary or permanent impacts proposed to tidal or nontidal wetlands and the 25-foot nontidal wetland buffer, nontidal waterways or the nontidal 100-year floodplain. This JPA will generally be submitted with the draft mitigation banking instrument and will be required prior to commencing regulated impacts under an approved bank. The bank sponsor should be working with the Department and the U.S. Army Corps of Engineers permit reviewers from the beginning of the bank review process.

For more information on wetland and waterway mitigation including guidance documents, please visit our website at:

<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/AboutWetlands/Pages/mitigation.aspx>

In addition to the information indicated on the previous pages, the following must be included for the Mitigation Bank Application to be considered complete by the Department.

- Letter from the property owner that indicates their interest in developing the mitigation bank. The letter should indicate whether the bank sponsor owns the land or is acquiring an interest in the proposed bank site. If the property owner will not be the applicant on the JPA, this letter must also clearly state that the property owner wants the bank sponsor / primary consultant (specify which) to be the JPA applicant. *Note: the JPA cannot be issued until the entity designated as the applicant purchases the property or provides a recorded site protection mechanism allowing for the mitigation construction.*
- Prospectus that includes all requirements in “Information for a Complete Mitigation Bank Prospectus per CFR 332.8(d)(2).
- Mitigation bank concept plans (8 ½” x 11”) depicting the entire project site, clearly showing the proposed restoration, creation, enhancement, and/or preservation. These plans should also show the boundary proposed to be protected through a site protection mechanism.
 - Drawings at a scale equal to 1-inch equals 200 feet or other scale approved by the Department, and showing existing topography, and boundaries of nontidal wetlands, tidal wetland, 25-foot nontidal wetland buffers, waterways, and 100-year floodplain, if applicable.
 - Vicinity map (8 ½” x 11”) of the proposed mitigation bank site that clearly shows the location of the project, including roads.
 - Proposed acreage and type of aquatic resources to be established at the mitigation bank.
 - Description of the methods of establishment of aquatic resources.
 - Proposed water source.
 - Description of proposed earth disturbance necessary.
 - Preliminary assessment of impact, if any, on existing nontidal wetlands, tidal wetlands, 25-foot nontidal wetland buffers, waterways, and 100-year floodplains.
 - Proposed mechanism to protect the mitigation bank site in perpetuity, including easements, covenants, deed restrictions, or similar means approved by the Department.
 - Information regarding consistency with natural resource management plans, approved watershed plans, forest conservation, local growth management policies, and local comprehensive plans:
- Impact sheets (8 ½” x 11”) clearly showing proposed impacts to all wetlands, 25-foot wetland buffers, waterways, and 100-year floodplains.
 - These impact sheets should differentiate between Department impacts and U.S. Army Corps of Engineer (USACE) impacts (e.g., include a table with them separated). For example, some stream impacts related to the restoration may be considered “temporary” by Department and “permanent” by the USACE.
 - Impacts should be separated by temporary versus permanent.
 - Impacts should be separated by type (e.g., PFO versus PEM, perennial versus intermittent stream).
- List of contiguous property owners and local officials (local officials should include county executive, county planning office, and county public works). *Note: if project is contiguous to State lines, must also include contiguous property owners and local officials from the other State.*
 - Include parcel map with numbers corresponding to property owners listed on table (to expedite Department confirmation that all contiguous property owners were included).

- List must be provided as labels in a Microsoft Word document (Avery 5160 format - 30 per page format). If mailing will be more than 50 people, applicant must provide pre-printed labels to Department for mailing.

- Certification of notification of contiguous property owners and local officials.
Please ensure this is signed and includes the permit numbers. Also include certified mail receipts for all properties (stamped white receipts and green confirmation cards) and a list of property owners where delivery was not possible.

- Public Notice Billing Approval Form.

- Site Evaluation Form is complete and included.