Proposed Closure of Old Mountain Road in Conjunction with the Construction of the MD 152 Interchange

Maryland Department of the Environment – WSA/IWPP

REVIEW FINDING: R2 Contingent Upon Certain Actions (MD2020 1026-0935)

Special protections for high-quality waters in the local vicinity, which are identified pursuant to Maryland's anti-degradation policy.

Direct any questions regarding the Antidegradation Review to Angel Valdez via email at angel.valdez@maryland.gov, or by phone at 410-537-3606.

Anti-degradation of Water Quality: Maryland requires special protections for waters of very high quality (Tier II waters). The policies and procedures that govern these special waters are commonly called "anti-degradation policies." This policy states that "proposed amendments to county plans or discharge permits for discharge to Tier II waters that will result in a new, or an increased, permitted annual discharge of pollutants and a potential impact to water quality, shall evaluate alternatives to eliminate or reduce discharges or impacts." Satisfactory completion of the Tier II Antidegradation Review is required to receive numerous State permits, such as those for wastewater treatment, nontidal wetlands disturbance, waterways construction, and coverage under the general construction permit.

The Tier II review is applicable to all portions of the whole and complete project within the Tier II watershed of Otter Point Creek 1. The review is, at a minimum, a two-step alternatives analysis process. The initial analysis considers if the activity can avoid any impacts to Tier II waters (alternative site or potentially by strategic design). The second analysis considers minimization alternatives to limit associated water quality degradation. This includes BMP considerations for erosion and sediment controls, mitigation for net loss of vital resources such as forest cover, and justification for unavoidable impacts. Under certain circumstances, MDE may require a third analysis which justifies the project based on social or economic rationale.

MDE is revising the overall Tier II review procedures by creating or updating forms to assist with the no-discharge alternatives analysis, minimization analysis, temporary impacts, and social and economic justification. Completion of these forms is required for permitting and other approvals.

Tier II No-Discharge Analysis Form V1.2:[1]

1. Code of Maryland Regulations (COMAR) 26.08.02.04-1 (G(1)) states that "If a Tier II antidegradation review is required, the applicant shall provide an analysis of reasonable alternatives that do not require direct discharge to a Tier II water body (no-discharge alternative). The analysis shall include cost data and estimates to determine the cost effectiveness of the alternatives".

2. For land disturbing projects that result in permanent land use change, this 'no discharge' analysis specifically evaluates the reasonability of other sites or alternate routes which could be developed to meet the project purpose, but are located *outside* of the Tier II watershed. Reasonability considerations, as applicable, may take into account property availability, site constraints, natural resource concerns, size, accessibility, and cost to make the property suitable for the project.

3. This analysis shall be performed regardless of whether or not the applicant has ownership or lease agreements to a preferred property or route.

Tier II Minimization Alternative Analysis Form V1.1:[2]

1. Code of Maryland Regulations (COMAR) 26.08.02.04-1 (G(3)) states that "If the Department determines that the alternatives that do not require direct discharge to a Tier II water body are not cost effective, the applicant shall: (a) Provide the Department with plans to configure or structure the discharge to minimize the use of the assimilative capacity of the water body".

2. This form helps to ensure that water quality impacts due to the proposed project are comprehensively identified, minimized, mitigated, and justified.

3. To demonstrate that appropriate minimization practices have been considered and implemented, applicants must identify any minimization practices used when developing the project, calculate major Tier II resource impacts, consider alternatives for impacts, and adequately justify unavoidable impacts. Further water quality impact minimization such as mitigation or out-of-kind offsets may be required.

Construction Stormwater Antidegradation Checklist - Version 1.1 :[3]

1. This form replaces the Tier II checklist, *Enhanced Best Management Practices for Tier II Waters*, distributed in the past.

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[1] https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/TierII_NoDischargeAnalysis_Form_1.2.pdf
[2] https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/TierII_Minimization_Form_1.1.pdf
[3] https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier-II-Forms/AntiDegradation%20Checklist%20V1.1.pdf

2. To complete the checklist, applicants are required to coordinate with the County or appropriate approval authority when developing construction plans and stormwater management plans.

3. Applicants are required to provide this form when seeking a NOI/DOI for coverage under the general construction permit. Other forms and documentation materials shall also be uploaded to the general construction permit site at this time.

Otter Point Creek 1, which is located within the vicinity of the Project, has been designated as a Tier II stream. The Project is within the Catchment (watershed) of the segment. (See attached map).

Currently, there is no assimilative capacity in this watershed. This means that recent data indicates that sometime after designation, the Tier II stream segment has degraded. Therefore, additional social and economic justification is needed. The SEJ is primarily a narrative that justifies the unavoidable impacts to water quality identified by the minimization alternatives analysis. A general outline of information required to complete the SEJ has been provided.

Planners should be aware of legal obligations related to Tier II waters described in the Code of Maryland Regulations (COMAR) 26.08.02.04 with respect to current and future land use plans. Information on Tier II waters can be obtained online at:
http://www.dsd.state.md.us/comar/comarhtml/26/26.08.02.04.htm
and policy implementation procedures are located at
http://www.dsd.state.md.us/comar/comarhtml/26/26.08.02.04-1.htm

Planners should also note as described in the Code of Maryland Regulations (COMAR) 26.08.02.04-1(C), "Compilation and Maintenance of the List of High Quality Waters", states that "When the water quality of a water body is better than that required by water quality standards to support the existing and designated uses, the Department shall list the water body as a Tier II water body. *All readily available information may be considered to determine a listing. The Department shall compile and maintain a public list of the waters identified as Tier II waters*."

The public list is available in PDF from the following MDE website:
http://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Documents/Tier_II_Updates/Antidegradation-Tier-II-Data-Table.pdf.

The interactive Tier II webmap is located at the following website:
(https://mdewin64.mde.state.md.us/WSA/TierIIWQ/index.html).

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ADDITIONAL COMMENTS

Stormwater

Planners should consider all Maryland Stormwater Management Controls and during Site Design the planner should consider all Environmental Site Design to the Maximum Extent Practicable and "Green Building" Alternatives. Designs that reduce impervious surface and BMPs that increase runoff infiltration are highly encouraged.

Further Information:
http://www.mde.state.md.us/programs/water/StormwaterManagementProgram/Pages/swm2007.aspx

Environmental Site Design (Chapter 5):
http://www.mde.state.md.us/programs/water/StormwaterManagementProgram/Documents/www.mde.state.md.us/assets/document/Design%20Manual%20Chapter%205%2003%2024%202009.pdf

Redevelopment Regulations:
http://www.dsd.state.md.us/comar/comarhtml/26/26.17.02.05.htm

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MD_ParcelBoundaries - Parcel Boundaries

Tier II Catchments 2016

- Assimilative Capacity Remaining
- No Assimilative Capacity Remaining
- Tier II Stream Segments 2016
- Tier II Baseline Stations 2016
- Maryland County Boundaries

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