



**Maryland**  
Department of  
the Environment

---

**House Bill 869**  
**Ecological Restoration Permitting Study-Update**  
Chesapeake Bay Commission Meeting  
10/27/23





## What is HB 869 Study?

- A comprehensive study, analysis, and evaluation of ecological restoration project (ERP) permitting by MDE's Wetlands and Waterways Protection Program
  - No funding or resources provided to implement study
- Submission of a report of the study findings including statutory or regulatory recommendations related to ecological restoration project permitting by MDE/WWPP
  - Stream restoration, nontidal wetland creation, living shoreline implementation



## Chesapeake Bay Commission Meeting 10/27/23

---

### **Nontidal Wetlands**

- Maryland Environment Article Title 5, Subpart 9. Nontidal Wetlands
- COMAR 26.23 Nontidal Wetlands

### **Nontidal Waterway Construction and Floodplains**

- Maryland Environment Article Title 5, Subpart 5 (§ 5-501-514)
- COMAR 26.17.04 Construction on Nontidal Waters and Floodplains

### **Tidal Wetlands**

- Environment Article Title 16 Wetlands and Riparian Rights
- 2008 Living Shoreline Protection Act
- COMAR 23.02.04 Board of Public Works, State Tidal Wetlands Licensing Procedures
- COMAR 26.24 MDE, Tidal Wetlands

### **Water Quality Certification**

- CWA Section 401 State Water Quality Certification
- 40 C.F.R § 121
- COMAR 26.08.02.10

### **Coastal Zone Management Act (Consistency Determination)**

- 15 C.F.R. § 930



## What is not included in the HB 869 Study?

- The study is not analyzing, evaluating or making recommendations regarding the adequacy or effectiveness of the Chesapeake Bay Program crediting protocols or best management practices for implementing the Chesapeake Bay Agreement goals
- Not studying the assignment of credits for ecological restoration projects
- Not evaluating or making recommendations related to the NPDES MS-4 permit or TMDL/WIP crediting application



## What does the HB 869 Study Require?

**Timeframe of Study:** October 1, 2022- June 1, 2024

**Required Study Areas for Review:** [HB869](#)

1. State statutes and regulations affecting permitting or completion of Ecological Restoration Projects (ERPs) permitted by WWPP
2. The permit and permit review process for ERPs
3. Opportunities for robust public comment and community review of ERPs
4. Average time between project submittal and approval of ERP
5. Efficiency and effectiveness of current Joint Permit Application (JPA) and permit review process, including counter incentives to watershed-based stream restoration



Chesapeake Bay Commission Meeting  
10/27/23

---

## Who is required to participate?

**Required:** Maryland Department of Natural Resources, Industry Professionals, Environmental Advocacy Organizations, Community groups and Community based advocacy organizations, County Governments (Env. Policy Directors and Sustainability Officers)

**Required As available:** University of Maryland Center for Environmental Science- Chesapeake Biological Laboratory, University of Maryland Palmer Lab, Other

\*Note- Legislators have attended several meetings



## Findings and Recommendations:

### **MDE shall develop legislative and regulatory recommendations that:**

1. Define ecological restoration (incorporating measurable scientific aims) including: (i) the reduction of nitrogen, sediment, and phosphorus pollution; and (ii) the improvement of benthic environment as compared with conditions existing at the site of the project during site selection.
2. Recommendation for a separate, distinct permit application and process for watershed-based ecological restoration permits.
3. Recommendation for permits to be reviewed holistically in a manner that weighs the benefits of a restored ecosystem over individual resources
4. Recommendations for ensuring permits are issued in a timely manner
5. Development of a schedule for regular evaluation of regulations to determine if changes are necessary due to scientific advances in the field.
6. Recommended changes to statutes and regulations that hinder ecological restoration permits, the review process, or project implementation
7. Include an evaluation of the need for continuing education requirements for staff of MDE and DNR that are involved in the permitting activities for wetlands and waterways
8. Include an analysis of whether additional staff or resources are needed for the establishment of a new permit (process)



**Chesapeake Bay Commission Meeting  
10/27/23**

---

## **What has been done since October 1, 2022?**

Five meetings have occurred:

Meeting 1 – Oct 13, 2022

Meeting 2 – Dec 13, 2022

Meeting 3 – Jan 31, 2023

Meeting 4 – May 2, 2023

Meeting 5- Aug 17, 2023

- Meeting 6- planned for November 9, 2023





## Chesapeake Bay Commission Meeting 10/27/23

---

### What have we covered?

- Current permitting process and timeframes, permitting checklists and updates (i.e. Riparian forest impacts and community engagement), policy initiatives, existing legal framework for permitting in MD, pre/post monitoring requirements, purpose and need for restoration projects, review of watershed based planning efforts and community engagement, public participation, pooled monitoring study roles, review of existing regulations
- Defined ecological restoration:
  - Activities undertaken with the goal of recovering, re-establishing or enhancing a degraded, damaged, or destroyed ecosystem through: a) improvements to physical, chemical, or biological characteristics or processes; b) returning natural or historic functions or services; or c) protecting or improving resiliency.
- Created an online ecological restoration literature library with an annotated bibliography

### What's left?

- Permitting turnaround times compared to other states, short and long term effect of a project meeting the aims of the community



## Chesapeake Bay Commission Meeting

10/27/23

---

### What have been the key takeaways?

- Purpose and Need, including alternative analysis
  - site selection, reduction of nitrogen, sediment, and phosphorus pollution, improvement of benthic environment, stabilization, flood management
- Community/Public engagement
  - Early and often
  - Communication from jurisdiction on watershed plans (include upland or programmatic practices)
- Monitoring
  - Pre-condition assessment and post construction monitoring
- Riparian Buffer impacts
  - Design selection



## Chesapeake Bay Commission Meeting 10/27/23

---

**What is being considered for short and long term permitting modifications as a result?**

**Short:** Implement policy changes now regarding what qualifies for streamlined permitting

- Stabilization, restoration, ecological uplift
- Needs for alternative analysis
- Implement enhanced public/community engagement correlated to above categories, including EJ community evaluation and climate change considerations
- Consistent monitoring of projects
- Staff Training

**Long:** Proposed statutory and regulatory changes, updating Program staffing levels and organization



Chesapeake Bay Commission Meeting  
10/27/23

---

## **Next Steps:**

Complete study meeting series

Draft report for June 1, 2024 submission