



# MARYLAND DEPARTMENT OF THE ENVIRONMENT

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## VIA CERTIFIED & U.S. REGULAR MAIL

November 1, 2011

Peter Aluotto, Director  
Department of Planning and Growth Management  
Charles County Government  
P.O. Box 2150  
La Plata, Maryland 20646

**Re: Charles County – Cross County Connector  
Denial of Nontidal Wetlands and Waterways Permit Application  
No. 04-NT-0443/200560531**

Dear Mr. Aluotto:

The Maryland Department of the Environment (the Department) received the September 16, 2011 letter from the County Commissioners of Charles County, Maryland to Secretary Summers informing the Department that the Charles County Board of Commissioners voted at its September 12, 2011 meeting that additional funds would not be committed to the Cross County Connector project at this time. In this letter, the Commissioners formally request additional status information and/or a decision on the non-tidal wetlands permit for this project.

The Department received the County's Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland for construction of Section 5 of the Charles County Cross County Connector on May 3, 2004 and for construction of Sections 6 and 7 of the Cross County Connector on November 4, 2004 (collectively, the Application). The Department reviewed the proposed construction of Sections 5, 6, and 7 as one complete and entire project. This letter is to inform you that the final decision of the Department is to deny the County's Application for Nontidal Wetlands and Waterways Permit No. 04-NT-0443/200560531.

In order for the Department to decide whether to issue a Nontidal Wetlands and Waterways Permit, the County must provide the Department with a complete application on which to base its decision [Md. Code Ann., Envir. § 5-505, § 5-906(c); COMAR 26.17.04.04, 26.23.02.01B-D.] The Department determined initially that the Application and subsequent submittals contained sufficient information for processing, including issuing public notices, and conducting two joint State-federal public informational hearings on April 26, 2005 and July 31, 2008. The Application, however, remains incomplete to date because you have not provided all of the information required for the Department to

complete its review under the applicable nontidal wetlands and waterway construction laws and regulations [Md. Code Ann., Envir. § 5-507; 5-907; COMAR 26.17.04.04-.08, .11; COMAR 26.23.02.04-.06]. Specifically, the following information remains outstanding.

1. ***Avoidance and Minimization:*** In its November 3, 2009 letter, the Department requested that the County investigate minimization measures that could further reduce wetland impacts. In its March 1, 2010 response, the County provided two potential road realignments that would reduce wetland impacts. While the Department considers these realignments that reduce wetland impacts to be positive, the Department, in its November 3, 2009 letter, also asked the County to investigate additional minimization measures that could further reduce impacts, such as reduction in the width of the road and reduction in speed limit. To date, the Department has not received the County's investigation of these additional minimization measures. The Department, therefore, cannot conclude that the regulated activity will first avoid and then minimize adverse impacts to nontidal wetlands. [Md. Code Ann., Envir. § 5-907(a); COMAR 26.23.02.04A; 26.23.02.05B.]
2. ***Engineering Information:*** In its December 6, 2004 letter, the Department requested the following engineering information: a detailed floodplain study for the proposed bridge over Mattawoman Creek; a floodplain study report for the 2-, 10-, and 100-year storm events for pre- and post-construction; drainage area for all other waterway crossings; and stream diversions and sequences of construction. To date, the Department has not received this engineering information. The Department, therefore, cannot conclude that floodplain and waterway construction issues associated with the proposed project have been adequately addressed. [Md. Code Ann., Envir. § 5-505; COMAR 26.17.04.04; 26.17.04.07-.08.]
3. ***Wetland Mitigation:*** The County submitted Phase I and Phase II Mitigation Plans proposing to restore 11.44 acres of forested nontidal wetlands at the Morgan property in Charles County. While the Department has not approved either Phase of the Mitigation Plan, the Department favorably considered the County's site selection even though a historic structure is located on the Morgan property. On October 19, 2011, the Department was informed by the Maryland Historic Trust (MHT) that most, if not all, of the Morgan property is recorded in the Maryland Inventory of Historic Properties, and the County's proposal to restore the site to forested nontidal wetlands would be contrary to MHT's goals. To resolve this issue, the County will need to provide additional information to MHT regarding the proposed mitigation. Until the MHT issue is resolved, the Department cannot conclude that the mitigation proposed by the Phase I and Phase II plans is adequate to offset the wetland impacts required to construct the Cross County Connector. [Md. Code Ann., Envir. § 5-909(a); COMAR 26.23.04.02B.]
4. ***Tier II Antidegradation Evaluation:*** In letters dated November 3, 2009, April 1, 2010, and December 27, 2010, the Department requested information related to the required Tier II antidegradation review for the Cross County Connector project. In the County's most recent submittal on the Tier II antidegradation evaluation (December 6, 2010 letter), the County suggested that it would use the following measures to address Tier II issues: increasing stream buffers based on stream order and proximity to steep slopes; reducing the extent of impervious surfaces to the maximum extent practicable on a per acre basis;

utilizing mitigation opportunities to provide additional offsets of any potential threats to Old Womans Run; and committing to annual monitoring of Old Womans Run. This submittal was only partially responsive to the Department's request for information and did not provide an adequate level of detail for the Department to conclude that Tier II issues have been adequately addressed and that the proposed project will not degrade surface and ground water quality. [Md. Code Ann., Envir. § 5-907(a); COMAR 26.23.02.04A; 26.23.02.06A.]

Due to the outstanding information described above, the County's Application remains incomplete and the final decision of the Department is to deny the County's Application for Nontidal Wetlands and Waterways Permit No. 04-NT-0443/200560531. You have the right to appeal this final decision by filing a petition for judicial review with the Clerk of Circuit Court for Charles County within thirty (30) days of receipt of this letter in accordance with Title 1, Subtitle 6 and § 5-204(f) of the Environment Article of the Annotated Code of Maryland and the Maryland Rules of Civil Procedure. If you choose not to petition the Circuit Court, you will lose your right to appeal the Department's denial of your Application.

Please be advised that under COMAR 26.23.02.03, unless there is substantive change in the application, the County may not reapply for authorization for this project until six months from the date of this letter, and at that time you will be required to submit a new application. Should you have any questions, please feel free to contact me at 410-537-3766 or via e-mail at [asigillito@mde.state.md.us](mailto:asigillito@mde.state.md.us).

Sincerely,



Amanda Sigillito, Chief  
Nontidal Wetlands Division

cc: Candice Quinn Kelly (Charles County Commissioners - President)  
Reuben B. Collins, Esq. (Charles County Commissioners – Vice President)  
Ken Robinson (Charles County Commissioners)  
Debra M. Davis, Esq. (Charles County Commissioners)  
Bobby Rucci (Charles County Commissioners)  
Jason Groth (Charles County)  
William Seib (U.S. Army Corps of Engineers)  
Robert Summers (MDE – Secretary)  
Rich Eskin (MDE – Science Services Administration)  
Gary Setzer (MDE – Wetlands and Waterways Program)  
Emily Vainieri (MDE – Office of the Attorney General)