



Maryland

Department of the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Crumles
Secretary

June 10, 2016

Re: Notice of Permit Decision
Nontidal Wetlands and Waterways Permit Application
Tracking Number 11-NT-0366/201161493

Dear Property Owner, Public Official, or Interested Person:

After examination and consideration of the documents received and evidence in the application file and record for the Washington Suburban Sanitary Commission sewer rehabilitation project in Quince Orchard Valley Park and Seneca State Park, the Water Management Administration has determined that the application meets the statutory and regulatory criteria necessary for issuance of a Wetlands and Waterway Permit. Copies of the permit and the Summary of the Basis for Decision are enclosed with this permit decision.

This is a final agency determination; there is no further opportunity for administrative review. Any person with standing, who is either the applicant or who participated in the public participation process through the submission of written or oral comments may petition for judicial review in the Circuit Court in the County where the permitted activity is to occur. The petition for judicial review must be filed within 30 days of the publication of the permit decision. Please see the attached Fact Sheet for additional information about the judicial review process.

If you have any questions or need any additional information, please do not hesitate to contact me at 410-537-3766.

Sincerely,

Amanda Sigillito, Chief
Nontidal Wetlands Division

/AS

Enclosures

FACT SHEET NEW JUDICIAL REVIEW PROCESS

Legislation passed by the 2009 General Assembly changes procedures for certain permits issued by the Department, including wetlands and waterways permits. The new judicial review procedures take effect on January 1, 2010 and will apply to final permit decisions issued on and after January 1, 2010.

Under pre-existing procedures, permit applicants and third parties with standing under Maryland law could challenge the issuance of a permit or the conditions of a permit through a request for a “contested case” adjudicatory hearing conducted by the Office of Administrative Hearings.

Effective January 1, 2010, the “contested case” process no longer applies to final decisions on applications for these permits. Rather, permits can be challenged through a request for direct judicial review in the Circuit Court for the county where the activity authorized by the permit will occur. Applicants, and persons who meet standing requirements under federal law and who participated in a public comment process by submitting written or oral comments (where an opportunity for public comment was provided), may seek judicial review. Judicial review will be based on the administrative record for the permit compiled by the Department and limited to issues raised in the public comment process (unless no public comment process was provided, in which case the review will be limited to issues that are germane to the permit).

Who Has Standing?

Anyone who meets the threshold standing requirements under federal law and is either the applicant or someone who participated in the public participation process through the submission of written or oral comments, as provided in Environment Article § 5-204, Annotated Code of Maryland. The three traditional criteria for establishing standing under federal law are injury, causation, and redressability, although how each criterion is applied is highly fact-specific and varies from case to case. Further, an association has standing under federal law to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

What is the Procedure for Seeking Judicial Review?

Petitions for judicial review of a final determination or permit decision subject to judicial review must be filed in accordance with § 1-605 of the Environment Article no later than 30 days following publication by the Department of a notice of final determination or final permit decision and must be filed in the circuit court of the county where the permit application states that the proposed activity will occur. Petitions for judicial review must conform to the applicable Maryland Rules of Civil Procedure.

To review the legislation follow the link below:

http://mlis.state.md.us/2009rs/chapters_noln/Ch_650_sb1065T.pdf

For a complete list of permits that these procedures apply to follow the link below:

http://www.mde.state.md.us/programs/ResearchCenter/LawsandRegulations/Pages/ResearchCener/laws_regs/jrproc.aspx

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION
NOTICE OF DECISION

In the Matter of: Washington Suburban Sanitary Commission
Nontidal Wetlands and Waterways Permit
Application Number 11-NT-0366/201161493

Hearing Date: April 13, 2016

Hearing Location: Quince Orchard Valley Park Activity Building
Gaithersburg, Montgomery County, Maryland

Decision: Approval

Date: June 10, 2016



The review of the nontidal wetlands and waterways permit application in the above-referenced matter has been governed by criteria set forth under Title 5, Subtitle 5, Environment Article, Annotated Code of Maryland, entitled Appropriation or Use of Waters, Reservoirs, and Dams; Subtitle 9, Environment Article, Annotated Code of Maryland, entitled Nontidal Wetlands; and Code of Maryland Regulations (COMAR) Title 26, Subtitle 17, Chapter 04, Construction on Nontidal Waters and Floodplains and Subtitle 23 Nontidal Wetlands. The permit application has been reviewed for compliance with Maryland water quality standards under COMAR Title 26, Subtitle 08, Chapter 02 Water Quality.

After examination of all documents and evidence in the above-referenced matter, I have determined that:

1. The applicant has demonstrated a need for impacts to the 100-year floodplain;
2. The applicant has minimized impacts to the 100-year floodplain ,
3. No rare, threatened or endangered species have been identified in the area of impact from the proposed project;
4. No historical or archeological sites have been identified in the area of impact for the proposed project;
5. The project is consistent with State water quality requirements;
6. Public notice and public informational hearing requirements have been satisfied; and,
7. The applicant has demonstrated that the project has independent utility from any potential future projects.

Nontidal Wetlands and Waterways Permit Application 11-NT-0366/201161493 meets the criteria set forth in statute and regulation governing impacts to wetlands and waterways. Nontidal Wetlands and Waterways permit number 11-NT-0366/201161493 may be issued by the Water Management Administration to authorize the Washington Suburban Sanitary Commission for the Consent Decree-mandated sewer rehabilitation project in Quince Orchard Valley Park and Seneca State Park, which includes rehabilitation of 0.29 miles of 47-year old sewer pipe and five sewer manholes. All impacts are for access and are temporary: 5,523 square feet to the 100-year floodplain. The project site is located behind the Seneca Wastewater Treatment Plant in Seneca State Park, Germantown, Montgomery County.

All temporary impacts in Quince Orchard Valley Park have been avoided by implementing walk in access for sewer rehabilitation and a bridge crossing for access over an unnamed tributary to Great Seneca Creek.

A brief explanation of the rationale for this decision is contained in the attached Summary of Basis for Decision.

Amanda Sigillito, Chief
Nontidal Wetlands Division

**SUMMARY OF THE BASIS FOR THE DECISION TO ISSUE NONTIDAL WETLANDS
& WATERWAYS PERMIT MODIFICATION NO. 11-NT-0366/201161493**

Name of Applicant
Washington Suburban Sanitary Commission

Application Number
11-NT-0366/201161493

Project Manager
Lisa Dosmann/Hira Shrestha

Date of Decision
June 10, 2016

The Environment Article, Annotated Code of Maryland and the Code of Maryland Regulations establish criteria for the Maryland Department of the Environment (Department or MDE) to consider when evaluating projects that propose to change the course, current or cross section of a nontidal stream or other body of water or to impact a nontidal wetland. If the criteria are satisfied, the Department may issue a permit for the proposed activity. The Department may deny a permit for a waterway construction activity that it believes is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest. The Department may not issue a nontidal wetland permit for a regulated activity unless it finds that the applicant has demonstrated that a regulated activity, which is not water-dependent, has no practicable alternative, will minimize alteration or impairment of the nontidal wetlands, and will not cause or contribute to a degradation of ground or surface waters.

In the case of the sewer rehabilitation project in Quince Orchard Valley Park and Seneca State Park, the question for the Department to address is whether or not the proposed project impacts are acceptable under the regulations as they pertain to such construction activities. The project includes rehabilitation of 0.29 miles of 47-year old sewer pipe and five sewer manholes. The temporary impacts are limited to 5, 523 square feet of the 100-year floodplain, located behind the Seneca Wastewater Treatment Plant in Seneca State Park, Germantown, Maryland.

PUBLIC NOTICE

Adjoining property owners, local government officials and other interested persons must be notified of proposed impacts to nontidal wetlands and waterways. In addition, an opportunity to comment and request a public informational hearing must be provided via a local newspaper. The public notice on this application was published in *The Sentinel* newspaper on March 31, 2016. Copies of the public notice were mailed to adjacent property owners and to those on the Interested Persons List. Additionally, the public notice appeared on the Department's website on April 1, 2016.

The public notice included an announcement for a public informational hearing on the proposed permit modification. The public informational hearing was held on Wednesday, April 13, 2016 at the Quince Orchard Valley Park Activity Building located at 12015 Suffolk Terrace, Gaithersburg, Maryland. Approximately 42 interested persons attended the public informational

hearing. Interested persons provided comments at the public informational hearing and during the subsequent comment period that was extend to May 2, 2016.

Several comments received were related to matters outside the scope of the permit application (e.g., construction traffic on residential roads, construction noise, pedestrian safety) and are not addressed in this document, but the Applicant is aware of the concerns. Comments directly related to the permit application include alternative access routes (addressed in the "Alternative Analysis" section below) and whether there is a need for a floodplain study because the stream has moved over time. The latter comment has been addressed by the Department's Waterway Construction Division as follows. The alignment of nontidal streams change over time due to natural processes, and this change is necessary to keep the stream in a stable form. The fact that a stream moves does not necessarily mean the 100-year floodplain is changing. Indeed, most streams can shift location in the valley with no change to the limits of the 100-year floodplain.

PROJECT PURPOSE AND NEED

In order for the Department to authorize impacts to nontidal wetlands and their regulated buffers, regulated activities must be determined to be necessary and unavoidable to meet the basic project purpose. It is also important to note that the orderly development and use of land is regulated through planning and zoning controls implemented by the local government. In this particular instance, Montgomery and Prince George's Counties makes the decision about appropriate land use of the property. The project's purpose is to rehabilitate WSSC's aging sewer infrastructure, including manholes and pipe segments as well as stream stabilization projects. Approximately 2,700 manholes need to be accessed to accomplish these repairs that include approximately 358,000 linear feet of sewer relining throughout the WSSC district in Montgomery and Prince George's Counties. Specifically, repairs to manholes will include stream bank armoring, structural repairs, lining, and raising/replacing frames and covers. Repairs to sewer pipes will include stream armoring, lining, grouting, and internal/external point repairs. The project is divided into 24 sewer basins, and 22 projects that will reduce sanitary sewer overflows to waterways and improve water quality.

The project is necessary to comply with a Consent Decree that the WSSC entered into with the United States Environmental Protection Agency, the Department, and citizen groups. The Consent Decree was developed with the purpose of reducing the total number of sanitary sewer overflow events as well as the total quantity of untreated wastewater discharged into Maryland's wetlands, streams, parklands, and environmentally sensitive areas. (Source: Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland, Section 2a, September 15, 2011)

ALTERNATIVES ANALYSIS

For projects that are not water-dependent, the applicant must conduct an alternatives analysis to demonstrate that the project has no practicable alternative. The factors to be considered are whether the project purpose can be accomplished using one or more alternative sites in the general area; a reduction in the size, scope, configuration or density would result in less impact; the applicant made a good faith effort to accommodate the site constraints that caused the

alternative sites to be rejected; and that the regulated activity is necessary for the project to meet a demonstrated public need.

Due to the nature of the project, the rehabilitation of the existing aging sewer line, no practicable alternative exists. While alternative site selection is not possible for the rehabilitation of the sewer line, the access paths were evaluated to avoid impacts to nontidal wetlands, the nontidal wetland buffer and waterways. During the April 13, 2016 public informational hearing and the subsequent comment period, comments were made to the Department about alternative access paths to the work area, particularly in the Quince Orchard Valley Park. Three access points were identified; Suffolk Terrace, Sioux Lane, and PEPCO/Longdraft Road (Source: Power Point presentation and photos to file provided to MDE from WSSC on December 4, 2015). The following access points were not practicable for the following reasons:

- a. Sioux Lane – 3,300 linear feet of access road, low hanging power lines and terrain could not accommodate construction vehicles, greater than 6,000 square feet of wetland and buffer impacts, and three proposed stream crossings for access roads.
- b. PEPCO/Longdraft Road – 4,700 linear feet of access road, longitudinal access denied by PEPCO, terrain too steep to accommodate construction vehicles, and two proposed stream crossings, greater than 6,000 square feet of wetland and buffer impacts for access roads (Source: Copy of letter to file from PEPCO to WSSC, dated November 11, 2015).

It is important to note that all impacts to nontidal wetlands, the nontidal wetland buffer and waterways in the Quince Orchard Valley Park were eliminated. (Please see “Avoidance and Minimization” section below for further information on the avoidance of the impacts in Quince Orchard Valley Park.)

AVOIDANCE AND MINIMIZATION

If the alternative site analysis is accepted, the applicant must demonstrate that adverse impacts to nontidal wetlands, their regulated buffers, and the 100-year frequency floodplain are necessary and unavoidable. Avoidance and Minimization was accomplished in the Quince Orchard Valley Park by removing the vehicle access road in the wetland and buffer by utilizing walk-in rehabilitation methods, which is considered no impact because no access road is required. The stream crossings were reduced from three to one, and the remaining stream impact was removed by bridging the stream instead of using a culvert for the access road. This type of crossing is considered no impact by the Department’s Waterway Construction Division since the temporary bridge will span the stream from bank to bank, and will not change the course, current or cross-section of waters of the State. Consequently, this activity is not included in the Department’s permit modification. (Source: email to file from Jason Staley, WSSC to MDE, May 10, 2016 and reflected on full sized plans, dated May 4, 2016).

WATER QUALITY

Erosion and sediment control measures and stormwater management practices are designed to prevent the degradation of ground and surface water quality. Sediment pollution is addressed under Maryland's Erosion and Sediment Control Act. The law mandates local Soil Conservation Districts to review and approve erosion and sediment control plans developed in accordance with State standards. The Department's programmatic responsibilities are limited to promulgating regulations, and developing standards, ordinances and other criteria necessary to administer an erosion and sediment control program, including program oversight and delegation of enforcement authority to local governments. As a result, the Washington Suburban Sanitary Commission Environmental Programs Unit is responsible for the review and approval of an erosion and sediment control plan for the proposed project.

Stormwater discharges are addressed under Maryland's Stormwater Management Act. The law requires counties and municipalities to "adopt ordinances necessary to implement a stormwater management program." The Department's programmatic responsibilities are limited to promulgating regulations defining the minimum features of a stormwater ordinance and program oversight. The Department also reviews the stormwater management program of the counties and municipalities and their field implementation and requires corrective action where a program is found deficient. For most projects, compliance with the County-issued stormwater management approval ensures that the project will not degrade water quality, but for projects affecting Tier II waters, the Department will require a separate anti-degradation analysis. In this particular case, however, the Washington Suburban Sanitary Commission Environmental Programs Unit is responsible for the review and approval of the project's stormwater management plan.

During the application review process, the Department verifies that appropriate best management practices are incorporated into the sediment and erosion control plans and the stormwater management plans to protect the State's water resources. In order to insure that these practices are contained in the project's final design plans, the applicant will submit approved sediment and erosion control plans and stormwater management plans to the Department prior to the commencement of construction activities authorized by the Permit. The applicant has submitted the erosion and sediment control plans along with construction details for all regulated activities as requested in the meeting held on May 5, 2015. No stream diversion is needed since there will be no in-stream work resulting from the permit modification. Hydrologic and hydraulic analysis is not required for this permit modification since the impacts to the 100- year floodplain are temporary and there is no stream impact.

ENDANGERED SPECIES

Once the application is received, it goes through a screening process. This screening process uses Geographical Information System (GIS) to determine the proposed site location and whether or not there are designated resources in the area such as rare, threatened or endangered species. If there are resources identified, the Division sends copies of the proposed plan to the appropriate agencies to review and send comments. No rare, threatened or endangered species were

identified as being present in the impact area (Source: Letters to file from Fish and Wildlife Service, dated December 13, 2011; Maryland Department of Natural Resources, dated February 17, 2012).

HISTORIC PRESERVATION

The application was also screened using GIS for historical and archeological resources. There were historic properties and archeological resources identified as being present within the project area and the project location were referred to the Maryland Historic Trust for review. The Maryland Historic Trust determined that there would be no adverse effect (Source: Project Review Form from Maryland Historic Trust to file dated April 3, 2013).

MITIGATION

Mitigation is only a consideration in a permit decision after steps have been taken to avoid and minimize impacts to nontidal wetlands and their regulated buffers, and nontidal waterways, including the 100-year floodplain. For this Permit Modification, mitigation is not required because the impacts to the 100-year floodplain are temporary.

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

MODIFICATION OF PERMIT

PERMIT NUMBER: 11-NT-0366/201161493
EFFECTIVE DATE: June 10, 2016
EXPIRATION DATE: May 7, 2022
PERMITTEE: Washington Suburban Sanitary
Commission
Attn: Marcia Tucker
14501 Sweitzer Lane
Laurel, Maryland 20707



IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(a) AND §5-906(a), ANNOTATED CODE OF MARYLAND (2007 REPLACEMENT VOLUME), COMAR 26.17.04, 26.23.01 AND 26.08.02, NONTIDAL WETLANDS & WATERWAYS PERMIT NUMBER 11-NT-0366/201161493, ISSUED TO Washington Suburban Sanitary Commission, ("PERMITTEE"), IS HEREBY MODIFIED BY THE WATER MANAGEMENT ADMINISTRATION ("ADMINISTRATION") AS DESCRIBED BELOW:

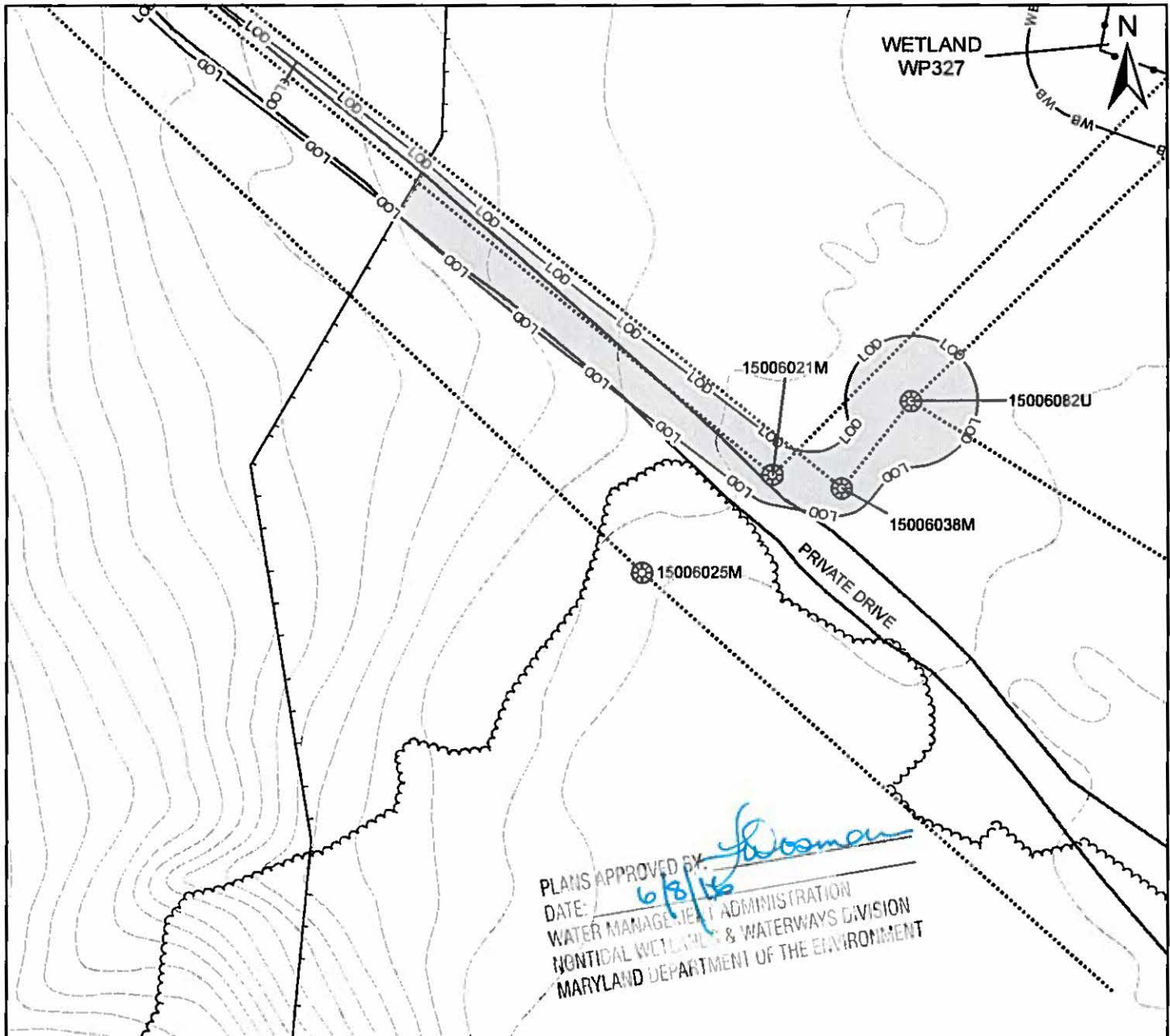
To modify the Permit as follows: to allow temporary access to Seneca State Park for the Consent Decree-mandated sewer rehabilitation project in Quince Orchard Valley Park and Seneca State Park, which includes rehabilitation of 0.29 miles of 47-year old sewer pipe and five sewer manholes. The temporary impacts are limited to 5,523 square feet to the 100-year floodplain, located behind the Seneca Wastewater Treatment Plant in Seneca State Park, Germantown, Montgomery County.

The temporary impacts in Quince Orchard Valley Park have been eliminated by implementing walk in access for sewer rehabilitation and a bridge crossing for access over an unnamed tributary to Great Seneca Creek.

THIS MODIFICATION SHALL BE CONSIDERED AS PART OF NONTIDAL WETLANDS & WATERWAYS PERMIT NUMBER 11-NT-0366/201161493. ALL OTHER CONDITIONS AND ELEMENTS OF THE PERMIT REMAIN IN EFFECT.

Amanda Sigillito, Chief
Nontidal Wetlands Division

cc: Jason Staley, WSSC
WMA Compliance w/file
Hira Shrethsa, MDE



—●— WETLAND BOUNDARY	— WUS WUS BOUNDARY	● MANHOLE	—▶ FLOWLINE
— 100-YEAR FLOODPLAIN	— WB WETLAND BUFFER SEWER PIPE	— Loo LIMITS OF DISTURBANCE
~~~~~ TREE LINE	□ STRUCTURES	- - - MATCHLINE	--- 2-FOOT EXISTING CONTOUR
			□ ROADS

#### WETLAND IMPACTS

- ▨ TEMPORARY WETLAND IMPACTS = 0 SF/ 0 AC
- ▩ PERMANENT WETLAND IMPACTS = N/A

#### WATERS OF THE U.S. (WUS) IMPACTS

- ▨ TEMPORARY WUS IMPACTS = 0 SF/ 0 AC/ 0 LF
- ▩ PERMANENT WUS IMPACTS = N/A

#### WETLAND BUFFER IMPACTS

- ▨ TEMPORARY WETLAND BUFFER IMPACTS = 0 SF/ 0 AC
- ▩ PERMANENT WETLAND BUFFER IMPACTS = N/A

#### 100-YEAR FLOODPLAIN IMPACTS

- ▨ TEMPORARY FLOODPLAIN IMPACTS = 5,523 SF/ 0.13 AC
- ▩ PERMANENT FLOODPLAIN IMPACTS = N/A

SCALE:

1 INCH = 50 FEET

0 25 50 100  
FEET



**Washington Suburban  
Sanitary Commission**

#### WSSC SENECA CREEK BASIN SEWER REHABILITATION PROJECT AREA 5

COUNTY: MONTGOMERY  
 APPLICATION BY: WASHINGTON SUBURBAN  
 SANITARY COMMISSION  
 SHEET # 23 OF 26 OCTOBER 2014

