



DEPARTMENT OF THE ARMY  
BALTIMORE DISTRICT, CORPS OF ENGINEERS  
ATTN: REGULATORY BRANCH  
2 HOPKINS PLAZA  
BALTIMORE, MD 21201

Effective October 1, 2021

CENAB-OPR-MDSPGP-6 (MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-6)

TO WHOM IT MAY CONCERN:

Upon recommendation of the Chief of Engineers, and under the provisions of Section 404 of the Clean Water Act, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged or fill material or the placement of structures into Waters of the United States, including wetlands and navigable waters. These discharges and structures must comply with all the terms and conditions identified in this MDSPGP-6. It has been determined that the project qualifies for the MDSPGP-6. Accordingly, you are authorized to undertake the activity pursuant to:

1. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403); and/or
2. Section 404 of the Clean Water Act (33 U.S.C. 1344).

You are authorized to perform work in accordance with the terms and conditions specified in Section VII of the MDSPGP-6 effective on October 1, 2021.

**VII. General Conditions:** To qualify for MDSPGP-6 authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any activity-specific impact limits and requirements identified in the Description of MDSPGP-6 Authorized Activities, and any case-specific special conditions imposed by the Corps.

**A. General Requirements:**

1. **Other Permits:** Authorization under the MDSPGP-6 does not obviate the need to obtain other federal, state, or local authorizations required by law or to comply with all federal, state, or local laws.
2. **Minimal Effects:** Projects authorized by the MDSPGP-6 shall have no more than minimal individual and cumulative adverse environmental effects, as determined by the Baltimore District.
3. **Single and Complete Projects:** The proposed activity(ies) must be a single and complete project. The same activity cannot be used more than once for the same single and complete project.
4. **Use of Multiple MDSPGP-6 Activities:** More than one MDSPGP-6 activity may be used to authorize a single and complete project. However, the specific requirements, including all activity-specific requirements and impact thresholds, must be met for each MDSPGP-6 activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the MDSPGP-6 activity with the highest specified acreage and/or linear foot limit. If only one of the MDSPGP-6 activities used to authorize the single and complete project has a specified acreage and/or linear foot limit, the total authorized impacts to waters of the United States cannot exceed the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category B-(d)(1) with an associated nontidal bank stabilization authorized under Category B-f(4), the maximum acreage loss of waters of the United States for the single and complete project cannot exceed 0.5 acre and/or 1,000 linear feet in total length.

The road crossing and nontidal bank stabilization activities must still meet all Category B activity-specific requirements, impact thresholds, and the General Conditions of the MDSPGP-6.

An overall project with multiple impacts, which may be eligible for authorization under a Category A and a Category B activity, requires an application submittal to the Corps and review under the MDSPGP-6 Category B verification procedures. All specific requirements, including the activity-specific requirements and impact thresholds of the Category A activity and the Category B activity must be met and the total extent of project impacts must not exceed the total acreage and/or linear foot limit of the MDSPGP-6 activity with the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category A-d(1) with an associated nontidal bank stabilization authorized under Category B-f(4), the maximum total impact limits to waters of the United States for the road crossing cannot exceed 5,000 square feet or 200 linear feet in stream impact, and the total acreage of loss of waters of the United States due to the road crossing and bank stabilization activities cannot exceed 0.5 acre and 1,000 linear feet. The road crossing activity must meet the Category A activity-specific requirements and impact thresholds, the nontidal bank stabilization activity must meet the Category B activity-specific requirements and impact thresholds, and the single and complete project must meet the General Conditions of the MDSPGP-6.

5. **Permit On-Site:** The permittee shall ensure that a copy of the MDSPGP-6 and the accompanying verification letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.
6. **Authorized Activities in Navigable Waters Subject to Section 10 of the Rivers and Harbors Act of 1899:**
  - a. No activity may cause more than a minimal adverse effect on navigation.
  - b. All activities must comply with the *Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels*. Please see the Baltimore District's webpage to view this guidance: <https://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>. For additional information regarding 408 permission, please see the following link: <https://www.nab.usace.army.mil/Missions/Regulatory/Section-408-Requests/>.
  - c. The permittee understands and agrees that, if future operations by the United States require removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable water, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
  - d. The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for

such damage.

- e. The permittee must install and maintain, at his/her expense any safety lights, markers, and/or signals prescribed by the USCG, through regulations or otherwise, on the authorized facilities and/or structures. The permittee must contact the Commander (AOWW), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704, to ascertain the need for obstruction lights. Prior to commencing the construction or installation of an authorized structure in navigable waters of the United States, the permittee must submit a "Private Aids to Navigation Application" (CG-2554) to the Commander of the USCG and receive approval. This form can be found at: [https://www.navcen.uscg.gov/pdf/AIS/CG\\_2554\\_Paton.pdf](https://www.navcen.uscg.gov/pdf/AIS/CG_2554_Paton.pdf). The permittee must provide a copy of the USCGs approval to the Corps within 30 days of the date of receipt.
- f. The permittee, or the permittee's contractor, must request, a minimum of 21 days prior to commencing work, in writing, to the U.S. Coast Guard, that a Local Notice to Mariners be issued regarding the authorized work. The written request must include the location coordinates of the authorized structures, including minimum depth and other pertinent information (i.e., description of activities, the type of construction equipment to be used, the expected duration of the work on the waterway). The written request should be addressed to the following: Commander, Fifth Coast Guard District (dpw), Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, Phone Number: (757) 398-6229, Email: [cqd5waterways@uscg.mil](mailto:cqd5waterways@uscg.mil).

**7. For Aerial Transmission Lines Across Navigable Waters:**

- a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the USCG for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions: producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

NOMINAL SYSTEM VOLTAGE (kV)	Minimum additional clearance (ft.) above clearance required for bridges.
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

- b. The application for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high-water elevation.

- c. Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
  - d. Corps Regulation ER 1110-2-4401 prescribes minimum vertical clearances for power and communication lines over Corps lake projects. In instances where both the National Electrical Safety Code requirements and ER 1110-2-4401 apply, the greater minimum clearance is required.
  - e. All proposed work shall comply with the most current version of the Baltimore District's *Minimum Setback Guidance for Structures Along Federally Authorized Channels* on the Baltimore District Regulatory website:  
<https://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>.
8. **Historic Properties:** Any activity authorized by the MDSPGP-6 shall comply with Section 106 of the National Historic Preservation Act. When an application submittal is required, Maryland Department of the Environment, in cooperation with the Maryland Historic Trust (MHT), shall conduct an initial review and notify the Corps if any archaeological or other cultural resources are in the vicinity of the project. The Corps may require applicants to perform a survey of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required. When an application submittal is not required for MDSPGP-6 authorization, the applicant must coordinate with the Maryland Historical Trust concerning historic properties that might be affected by the proposed activity. The applicant must notify the Corps if they have knowledge that the activity might affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places. Upon discovery of any previously unknown historic, cultural, or archeological resources or remains while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps of what has been found and avoid construction activities that may affect the resources or remains until the required coordination has been completed. The Corps will initiate the federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. The permittee shall not begin or continue work until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed. Information on the location and existence of historical resources can be obtained from the MHT, Office of Preservation Services, and the National Register of Historic Places. The Corps will conclude all tribal coordination in accordance with the District's tribal coordination procedures prior to verifying an activity authorized by MDSPGP-6.
9. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights.
10. **National Lands:** Activities authorized by the MDSPGP-6 shall not impinge upon the value of any federal land, including but not limited to, National Wildlife Refuges, National Forests, National Parks, National Marine Sanctuaries, or any area administered by the FWS, U.S. Forest Service, or National Park Service (e.g., Assateague Island National Seashore). Resources can be identified on the "federal Lands" layer within MERLIN (<https://gisapps.dnr.state.md.us/MERLIN/index.html>).
11. **Endangered Species:** The MDSPGP-6 does not authorize any activity that might directly or indirectly affect a threatened or endangered species or a species proposed for such designation, as identified under the federal ESA; or which may directly or indirectly destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and procedures. Applicants may conduct an initial review for ESA resources, including FWS and/or

NMFS species and critical habitat, utilizing the appropriate website(s) provided below.

MDE, in cooperation with MD DNR, shall conduct an initial review and notify the Corps and FWS or NMFS if any federally listed species or critical habitat is likely to be in the vicinity of the project. The Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization.

Information on threatened and endangered species and their critical habitat can be obtained from the offices of the FWS and NMFS or their web pages at:

<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>, and, <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html> respectively.

**12. Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species:**

Any interaction between a sea turtle or any species listed now or in the future under federal law as a threatened or endangered species (“listed species”) (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the vessels associated with the project must be reported to the NMFS as follows: If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the NMFS Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery. If the animal requires assistance, or appears to be injured (i.e., bleeding, gasping for air, etc.) or dead, the permittee or its representative must immediately call the Entanglement Hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify the Corps of all correspondence and interaction with the NMFS within two calendar days. An interaction is defined as an entanglement or capture of a listed species or a strike/direct contact between vessels or equipment used for the project and a listed species.

- 13. Vessel Buffer:** When federally listed species under NMFS jurisdiction are sighted, vessels must attempt to maintain a distance of 50 yards (150 feet) or greater between the animal and the vessel whenever possible. State and federal regulations prohibit approaching a right whale within a 500-yard (1,500 foot) buffer zone. Any vessel finding itself within the 500-yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100 yards (300 feet) of the animal must be avoided. Vessels must reduce speeds to four (4) knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the NMFS (<https://www.fisheries.noaa.gov/report>).

**14. Best Management Practices Applicable to Category A and Category B Activities within Tidal Waters and Wetlands:**

a. **Pile Driving Condition for Category A Activities: All Category A activities must meet one of the following conditions:**

1. Plastic or concrete piles must be less than 12 inches in diameter when a cushioned impact hammer or vibratory hammer is utilized for installation.
2. Timber piles must be 12 inches or less in diameter when a vibratory hammer is utilized for installation.
3. Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
4. Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
5. Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
6. Piles of any size/type with any hammer method must be installed between November 30 and March 15.

**(Note:** Any pile driving activity that does not meet one of the conditions above must be reviewed by the Corps as a Category B activity or an alternate Corps permit review process, as appropriate.)

- b. **Pile Driving Condition for Category A and Category B Activities:** For Category A and Category B activities, pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20-minute period to allow for fish and other wildlife to leave the area.

15. **Sediment Disturbing Activities Time-of-Year Restriction for Category A and Category B Activities:** Sediment disturbing activities, which includes pile driving activities, are prohibited during the period April 1 through June 30 within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 parts per thousand for the protection of shortnose sturgeon during early life stages in these waters (See Appendix B: Low Salinity Waters in Maryland Chesapeake Bay Map).

16. **Critical Habitat:** Any work proposed in designated or proposed critical habitat requires a case-by-case Category B review by the Corps. Current designated Critical Habitat within the State of Maryland includes:

- a. **Potomac River** from the mouth of the Chesapeake Bay to the Little Falls Dam, including Breton Bay and St. Clements Bay;
- b. **Nanticoke River** from the mouth of the Chesapeake Bay to the Route 313 bridge; and
- c. **Marshyhope Creek** from the confluence with the Nanticoke River to the Route 318 bridge.

17. **Wild and Scenic Rivers:** No activity is authorized under the MDSPGP-6 that occurs in a component of the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such

rivers are in an official study status, unless the appropriate federal agency, with direct management responsibility for the river, has determined in writing that the proposed activity will not adversely affect any National Wild and Scenic River, including study rivers. Information on Wild and Scenic Rivers may be obtained from the appropriate federal land management agency in the area (e.g., National Park Service, U. S. Forest Service, Bureau of Land Management, or FWS) or at <https://www.rivers.gov/maryland.php>.

18. **Federally Authorized Civil Works Projects:** Under 33 USC 408, no activity may temporarily or permanently alter or make use of a U.S. Army Corps of Engineers civil works project unless reviewed and permitted by the Secretary of the Army. The Corps may grant this permission if the work does not impair the usefulness of the project and is not injurious to the public interest. The MDSPGP-6 does not authorize any work which will interfere with an existing or proposed Corps Civil Works project (i.e., flood control projects, dams, reservoirs, and navigation projects), unless specifically waived by the Corps in writing. To determine applicability please see the Baltimore District's webpage to view this guidance: "Apply for 408 Permission" <https://www.nab.usace.army.mil/Missions/Regulatory/Section-408-Requests/>.
19. **Federal Liability:** In issuing this permit, the federal government does not assume any liability for the following:
  - a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes;
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
  - d. Design or construction deficiencies associated with the permitted work; and
  - e. Damage claims associated with any future modification, suspension or revocation of the MDSPGP-6 or any specific MDSPGP-6 verification.
20. **Fills Within 100-Year Floodplain:** The activity must comply with applicable Federal Emergency Management Agency-approved state or local floodplain management requirements.
21. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
22. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for obtaining any "take" permits required under the FWSs regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the FWS to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether any "take" permits are required for a particular activity. Information on the conservation of migratory birds and Bald and Golden Eagles can be found at the following FWS web site: <https://www.fws.gov/chesapeakebay/saving-wildlife/species/bald-eagle/index.html>.

23. **Hazardous Wildlife Attractants on or Near Airports:** Permittees must consider the activity's effects on aviation safety and design a project so it does not create a wildlife hazard. All authorized activities that may attract hazardous wildlife shall be consistent with the siting criteria and land use practice recommendations stated in the Federal Aviation Administration Advisory Circular 150/5200-33C (dated 02/21/2020). This document can be found at:  
[https://www.faa.gov/airports/resources/advisory\\_circulars/index.cfm/go/document.current/documentnumber/150\\_5200-33](https://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentnumber/150_5200-33).
24. **Water Quality Certification:** The conditions of the Clean Water Act Section 401 water quality certification (WQC) issued by the MDE are incorporated as conditions of the MDSPGP-6. If the applicant cannot comply with all of the conditions of this WQC previously issued by MDE for the issuance of the MDSPGP-6, then the applicant must obtain an individual Section 401 water quality certification or waiver thereof for any proposed MDSPGP-6 activity that may result in a discharge into waters of the United States in order for the activity to be authorized by the MDSPGP-6. The 401 WQC conditions issued by MDE for the MDSPGP-6 are available in Appendix C: 401 Water Quality Certification of this permit.
25. **Coastal Zone Management Consistency (CZM):** The MDE concurs that the MDSPGP-6 are consistent with the Maryland Coastal Zone Management Program's enforceable policies subject to the conditions of MDEs coastal zone management consistency concurrence herein attached in Appendix D: CZM Consistency of this permit. If an applicant cannot comply with all of the conditions of this coastal zone management consistency concurrence previously issued by MDE, then the applicant must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by the MDSPGP-6.
26. **Coastal Barrier Resources Act (CBRA):** Federal funding for certain activities requiring Corps authorization may be prohibited within the established Coastal Barrier Resources System, which is a defined set of coastal barrier units located along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. Activities authorized under the MDSPGP-6 must comply with the CBRA. More detailed information can be found at: <http://www.fws.gov/cbra>.
27. **Designated Critical Resource Waters:** Any activity proposed in the designated National Estuarine Research Reserves, including wetlands adjacent to those waters must be reviewed by the Corps under a MDSPGP-6 Category B activity or other Department of the Army permit. The designated National Estuarine Research Reserves in Maryland are:
- a. Jug Bay
  - b. Otter Point Creek
  - c. Monie Bay
28. **Avoidance and Minimization:** The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on-site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
29. **Mitigation Standards:** The Corps will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the adverse effects on the aquatic environment are minimal and that the project is eligible for authorization under the MDSPGP-6:



- a. Wetlands: Compensatory wetland mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 5,000 square feet and that require an application submittal for Corps authorization, unless the Corps determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse effects of the proposed activity are minimal and provides a project-specific waiver of this requirement. For wetland losses of 5,000 square feet or less that require an application submittal for Corps authorization, the Corps may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Generally, unless calculated by an approved wetland functional assessment process, the minimum required wetland mitigation ratios may be as follows: 2:1 for forested and scrub shrub wetlands; 1:1 for herbaceous emergent wetlands, and 1:1 for permanent conversion of forested wetlands to herbaceous emergent wetlands, unless the Corps determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are determined to be minimal and provides a project-specific waiver of this requirement. Maintenance of previously authorized activities typically does not require mitigation. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
- b. Streams and Other Open Waters: Compensatory mitigation at a minimum one-for-one ratio will be required for permanent losses of streams or other open waters that exceed 200 linear feet and that require an application submittal for Corps authorization, unless the Corps determines in writing that either some other type of mitigation would be more appropriate, or the adverse effects of the proposed activity are minimal and provides a project-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through stream rehabilitation, stream enhancement (including enhancement of riparian buffers), or preservation, focusing on functional replacement, to ensure that the activity results in minimal adverse effects on the aquatic environment. In addition, compensatory mitigation plans for losses of streams and other open waters will normally include a requirement for the restoration or establishment, maintenance, and site protection of riparian areas next to open waters. Riparian buffer areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns. Typically, the riparian area will not be less than 35 feet wide on each side of the stream, but the Corps may require wider riparian areas to address documented water quality or habitat loss concerns. Furthermore, the Corps may determine that restoration or establishment of a riparian area along a single bank or shoreline is sufficient when it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters.
- c. Conversion of Aquatic Resources: Where certain functions and service of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.
- d. All compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.
- e. The applicant is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment. Applicants

may propose the use of mitigation banks, in-lieu-fee programs, or separate permittee-responsible mitigation.

- f. When permittee-responsible mitigation is the proposed compensatory mitigation option, the applicant is responsible for submitting a compensatory mitigation plan. A conceptual or detailed mitigation plan may be used by the Corps to make the decision on the MDSPGP-6 verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the Corps prior to the commencement of work in waters of the United States. The special conditions of the MDSPGP-6 verification must clearly indicate the party or parties responsible for the implementation, performance, and, if required, the long-term management of the permittee-responsible compensatory mitigation project.
- g. When mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number and resource type of credits to be provided. The special conditions of the MDSPGP-6 verification must either identify the specific mitigation bank or in-lieu fee program, or state that the specific mitigation bank or in lieu fee program used to provide the required compensatory mitigation must be approved by the Corps before the credits are secured and prior to the commencement of the work in waters of the United States.
- h. For losses of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee.
- i. Compensatory mitigation will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-6. For example, if a Category B activity has an acreage limit of 0.5-acre loss, the activity cannot be used to authorize any project resulting in losses greater than 0.5 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the impacted waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the terms and conditions, including the acreage limits, also satisfies the minimal impact requirement associated with the MDSPGP-6.

30. **Work in Wetlands:** Heavy equipment working in wetlands shall be avoided if possible and, if required, soil and vegetation disturbance shall be minimized by using techniques such as timber mats, geotextile fabric, and vehicles with low-pressure tires. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-6 shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade.

31. **Removal of Temporary Fill, Structures, and Mats:** Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP-6. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-6 shall be properly stabilized during use to prevent erosion.

- a. All temporary fills shall be removed in their entirety within 14 calendar days after the structure or fill is no longer needed for their authorized purpose, subject to any time-of-year restrictions, and no later than completion of project construction not to exceed twelve months after commencing the temporary impacts.
- b. Category B review required: When temporary fills in waters of the United States will not be removed within the 12-month period, an application must be

submitted, and the activity reviewed by the Corps under a Category B or alternate permit review process. Compensatory mitigation may be required to offset any adverse temporal effects.

- c. If time of year restrictions interfere with the removal of the fill or structures, the permittee must immediately contact the Corps and/or MDE for further instruction.
- d. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
- e. Temporary fill areas shall be restored to their original, pre-construction elevations and contours and revegetated with native wetland species. Temporary fill areas in streams shall be restored to original, pre-construction elevations and contours using native substrate materials.
- f. The application must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- g. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade.

**32. Erosion and Sediment Control:** Adequate erosion and sediment control measures, practices, and devices, such as turbidity curtains in tidal waters, vegetated filter strips, geotextile silt fences, phased construction, or other devices or methods, must be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities shall be moved to upland areas and stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States. These devices and methods shall be capable of (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete, and the site has been successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date. In-stream work that involves the stream bed shall be conducted "in the dry" whenever practicable. This should be accomplished using stream diversion devices, other than earthen or stone cofferdams. In addition, work in waters of the United States shall be performed during periods of low-flow or no-flow, whenever practicable. The width of any temporary fill must be limited to the minimum necessary for temporary construction access.

**33. Aquatic Life Movements:** No activity may substantially block, impede or disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through, or spawn/nursery within the area (e.g., anadromous/catadromous fish); unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. A low flow channel must be maintained through any discharges placed for armoring across the channel so as to not to impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine, and resident fish.

**34. Depressing Pipes and Culverts:** Culverted crossings of intermittent and perennial waterbodies must meet the following conditions:

- a. Countersinking Pipes and Culverts: Permanent culverts and pipes that are greater than 36 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert. Culverts and pipes

measuring 36 inches or less in diameter must be countersunk a minimum 6 inches below the natural stream invert.

- b. Hydraulic opening: Culverts and pipes must be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- c. Pipes and culverts on bedrock or above existing buried utility lines/pipes: If a permittee determines that countersinking a culvert or pipe in accordance with these conditions is not practicable due to bedrock or an existing buried utility line/pipe, documentation concerning site conditions and limitations, including photographic documentation showing bedrock condition; existing inlet and outlet elevations; cost and engineering factors; or other evidence must be submitted with the application. Permittees must also provide documentation of measures evaluated to minimize disruption of the movement of aquatic life, including but not limited to, the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, partial countersinking, constructing stone step pools, low rock weirs downstream, or alternative crossing locations that would allow for countersinking.
- d. Extensions of existing pipes and culverts: The countersinking requirements do not apply to extensions of existing culverts or pipes that are not depressed below the stream invert.
- e. Category B review required: When countersinking of the pipe or culvert is not practicable in accordance with the requirements above (except those pipes and culverts placed in streams on bedrock or over buried utility lines/pipes or existing pipe/culvert extensions), an application must be submitted, and the activity reviewed under a Category B or alternate Corps permit procedures. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include the use of a bridge, bottomless pipe/culvert, or other bottomless structure to cross the waterway, partial countersinking, constructing stone step pools or low rock weirs downstream, or alternative crossing locations that would allow for countersinking. The application must include photographs documenting existing site conditions. The applicant may find it helpful to contact their regional fishery agency, National Marine Fisheries Service, Habitat and Ecosystem Services Division, for recommendations about the measures to be taken to allow for migratory fish passage.

### 35. **Water Crossings:**

- a. All water crossings (e.g., utility lines and road crossings) must be constructed roughly perpendicular to waters of the United States, including streams and adjacent wetlands, except for instances where the existing on-site conditions would require a diagonal crossing of the waterway. Where a utility line or access road is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line/access road and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance.
- b. Water crossings must be constructed "in the dry" whenever practicable. This should be accomplished by using stream diversion devices other than earthen or stone cofferdams.
- c. Equipment shall cross streams only at suitably constructed permanent or temporary crossings.
- d. The width of any temporary fill must be limited to the minimum necessary for temporary construction access.
- e. Category B review required for any new culvert installation or culvert replacement where more than one (1) permanent culvert is proposed to be installed at a single location (side by side) within a perennial non-tidal stream channel. (Please note that this condition does not apply to intermittent or ephemeral stream channels, temporary crossings, tidal crossings, or culverts installed in the floodplain). Please note that a single culvert may not be placed in each stream braid within the same channel under CAT A.
- f. Generally, water crossings must be considered with the following preference: Bridges, single open bottom culverts (includes plated arch culverts), single culverts depressed into the stream bed (pipe or box culverts) and multiple culverts (Requires CAT B review if installed in perennial non-tidal stream channel).

36. **Discharge of Pollutants and Debris:** All activities that are authorized under the MDSPGP-6 that involve a discharge of dredged or fill material into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. 1251 et. Seq.), and applicable state and local laws and regulations. No discharge of dredged or fill material associated with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determined to be inappropriate by the Corps or MDE. Furthermore, after construction, the applicant must implement effective measures to limit trash and debris generated from the authorized facility from entering waterways.

37. **Spawning Areas:** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill materials in fish and shellfish spawning or nursery areas during spawning seasons, shall be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year. Activities that result in the physical destruction (e.g., through excavation, dredging, mining, fill, or significant downstream sedimentation by substantial turbidity) of an important spawning/nursery area (as determined by National Marine Fisheries Service and/or FWS) are not authorized by this MDSPGP-6. The applicant may refer to Maryland Coastal Atlas website

(<https://dnr.maryland.gov/ccs/coastalatlus/Pages/default.aspx>) or other reliable sources for this information.

38. **Anadromous Fish Time-of-Year Restrictions:** This condition applies to activities b(1), b(2), b(4), b(5), b(6), c(1), c(2), c(3), e(1), e(5), e(7), e(9), and f(4): To ensure that activities do not impact spawning habitat or a migratory pathway for anadromous fish, all in-water work is prohibited during February 15 to June 15 each year to protect sensitive life states of anadromous fish in all tidal and nontidal coastal plain streams within the State of Maryland, and all piedmont streams in Harford and Cecil Counties, Maryland, unless specifically waived by the Corps in consultation with the National Marine Fisheries Service – Habitat and Ecosystem Services Division. (See <https://gisapps.dnr.state.md.us/coastalatlus/WAB2/index.html>) If compliance with this time of year restriction is not practicable, the applicant must request a waiver for this time of year restriction by submitting an application to MDE for Corps authorization under a Category B in coordination with the National Marine Fisheries Service – Habitat and Ecosystem Services Division. The application must include written supporting information, including all options considered, demonstrating that this condition cannot be practicably met.
39. **Beneficial Reuse of Dredge Material:** Applicant must identify the intent to use dredge material for fill activities within waters of the United States at the proposed placement site. Applicants must provide the exact location and quantities of dredge material placement within waters of the United States to the Corps and MDE. Material testing is required at the dredging and placement sites prior to placement and must comply with the Evaluation of Dredged Material Proposed for Discharge in waters of the United States-Testing Manual: Inland Testing Manual ([https://www.epa.gov/sites/production/files/2015-08/documents/inland\\_testing\\_manual\\_0.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/inland_testing_manual_0.pdf)). At minimum, Tier 1 testing as outlined in Section 3.1 must be applied for all projects proposing beneficial reuse of dredge material within waters of the United States. Any temporary storage of dredge material must be placed in uplands in accordance with federal, state, and local regulations.
40. **Waterfowl Breeding and Wintering Areas:** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable. Information on the location of waterfowl breeding and wintering areas may be obtained from the Maryland Department of Natural Resources and the U.S. Fish and Wildlife Services.
41. **Environmental Values:** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-6 in a manner that maintains as many environmental values as practicable, and that avoids or minimizes any adverse impacts on existing fish, wildlife, and natural environmental values.
42. **Management of Water Flows:** Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways the activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

43. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
44. **Poured Concrete into Forms:** Activities that involve the discharge of poured concrete must be contained within cells or watertight forms until the concrete is set.
45. **Inspections:** The permittee shall permit the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of the MDSPGP-6. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work, and post-dredging survey drawings for any dredging work.
46. **Compliance Certification:** Every permittee who receives a written MDSPGP-6 verification from the Corps shall submit a signed Compliance Certification within 60 days following completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals). Permittees that only receive a Category A MDSPGP-6 verification from MDE are not required to submit a signed Compliance Certification to the Corps. Failure to submit the Compliance Certification by the permittee could result in the Corps taking appropriate non-compliance enforcement action against the permit holder. An example of an acceptable compliance certification can be found at the Corps website at:

<https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. Completed compliance certification forms must include the following:

- a. Permittee and File number.
- b. A statement that the authorized work either was or was not done in accordance with the MDSPGP-6 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-6 verification, including any general and/or specific conditions and requirements, the permittee shall describe the specifics of the deviation from the authorized activity.
- c. A statement that any required mitigation was or was not completed in accordance with the permit conditions. If the mitigation was not completed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions.
- d. The signature of the permittee, certifying the completion of the work and compensatory mitigation.

For MDSPGP-6 permits verified by the Corps: After the project is completed, the certification shall be sent to the Baltimore District at the following e-mail address: [nab-regulatory@usace.army.mil](mailto:nab-regulatory@usace.army.mil) or the address below:

**U. S. Army Corps of Engineers  
Baltimore District  
Attn: CENAB-OP-R  
2 Hopkins Plaza  
Baltimore, Maryland 21201**

47. **Transfer of MDSPGP-6 Verifications:** If the permittee sells the property associated with a MDSPGP-6 verification, the permittee may transfer the MDSPGP-6 verification to the new owner by submitting a letter to the Baltimore District Corps of Engineers office to validate the transfer. A copy of the MDSPGP-6 verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this MDSPGP-6 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-6, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-6 permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

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(Transferee)

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(Date)

48. **Maintenance:** The permittee shall properly maintain the work or structure authorized by the MDSPGP-6 in good condition and in compliance with the terms and conditions of the MDSPGP-6 including maintenance to ensure public safety.
49. **Property Rights:** The MDSPGP-6 does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations.
50. **Modification, Suspension and Revocation:** The MDSPGP-6, or any verification under it, may be either modified, suspended, or revoked, in whole or in part, pursuant to DA policies and procedures and any such action shall not be the basis for any claim for damages against the United States. The Corps will issue a public notice announcing any changes to the MDSPGP-6 when they occur; however, the permittee is responsible to remain informed of any changes to the MDSPGP-6.
51. **Restoration:** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-6, may be required to restore the wetland or waterway to its former condition, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.
52. **Special Conditions:** The Corps may impose special conditions on any project authorized under the MDSPGP-6, in cases where the Corps determines that special conditions are necessary to avoid or minimize adverse effects on the environment or on any other factor of the public interest. Failure to comply with all conditions of the authorization/ verification, including special conditions, will constitute a permit violation/unauthorized work and may subject the permittee to criminal, civil, or administrative penalties, and/or restoration.
53. **False or Incomplete Information:** In granting authorization pursuant to this permit, the Baltimore District will rely upon information and data provided by the permittee. If the Corps or MDE verifies the project under the MDSPGP-6 and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the MDSPGP-6 verification may be revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
54. **Compliance:** Any activity performed in waters of the United States, including wetlands and navigable waters that is not in compliance with all the terms and conditions of the MDSPGP-6, constitutes unauthorized work and is subject to an enforcement action by the Corps of the EPA. Furthermore, the MDSPGP-6 does not delegate any Section 404 enforcement or regulatory authority.



# **Maryland State Programmatic General Permit 401 Water Quality Certification (WQC) Conditions**

**CERTIFICATION NUMBER: 20-WQC-0051**

**ISSUED TO:** U.S. Army Corps of Engineers, Baltimore District  
2 Hopkins Plaza, Baltimore, MD 21201

**EFFECTIVE DATE:** March 24, 2021

**PROJECT LOCATION:** Waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways.

**DESCRIPTION OF CERTIFIED PROJECT:** This Maryland State Programmatic General Permit-6 (MDSPGP-6) applies to the discharge of dredged or fill material and/or the placement of structures into waters of the United States as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. Activities authorized by the MDSPGP-6 must be components of a single and complete project, including all attendant features both temporary and permanent, which individually and cumulatively result in no more than minimal adverse environmental impacts. Activities authorized under the MDSPGP-6 require compliance with all terms and conditions of the MDSPGP-6, including general conditions, activity-specific impact thresholds, and descriptions set out further herein. In addition, the Corps may add project-specific conditions to ensure that the adverse environmental effects are no more than minimal. These can include permit conditions such as time-of-year restrictions, use of best management practices, or compensatory mitigation requirements to offset authorized losses of waters of the United State so that the net adverse environmental effects are no more than minimal.

## **WATER QUALITY CERTIFICATION**

**UNDER AUTHORITY OF SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT AND ITS AMENDMENTS AND IN ACCORDANCE WITH § 9-313 THROUGH § 9-323, INCLUSIVE, OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, THE MARYLAND DEPARTMENT OF THE ENVIRONMENT, WATER AND SCIENCE ADMINISTRATION HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE REQUEST FOR CERTIFICATION FOR THE MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-6 (MDSPGP-6) (ATTACHMENT 1) WILL NOT VIOLATE MARYLAND'S WATER**

**QUALITY STANDARDS AND WATER QUALITY REQUIREMENTS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION AND THE MDSPGP-6 PERMIT CONDITIONS .**

This Water Quality Certification (Certification) is issued under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments, Title 9, Subtitle 3 of the Environment Article, and Code of Maryland Regulations (COMAR) 26.08.02.10. The Maryland Department of the Environment (MDE or Department) has determined from a review of the request application file that the project activities described in the above will not violate Maryland's water quality standards and water quality requirements, provided that the following conditions are satisfied. This Certification does not relieve any person conducting activities under this Certification and the MDSPGP-6 (Certification Holder) from the responsibility to obtain any other approvals, licenses, or permits in accordance with federal, State, or local requirements.

The Certification Holder subject to this Certification shall comply with the following conditions:

**SPECIAL CONDITIONS**

1) The Certification Holder conducting activities under e (10) New Stormwater Management Facilities shall obtain and comply with the appropriate stormwater management approval authority authorization to ensure that discharges from the constructed facility do not:

- (a) Violate water quality standards; and
- (b) Result in erosive flows downstream;

2) The Certification Holder conducting activities, not covered under Nationwide Permit #53, Removal of Lowhead Dams, that otherwise qualify for authorization or mitigation under the MDSPGP-6 and involve the removal of lowhead dams shall:

- (a) Submit to the Corps documentation that the Certification Holder has consulted with the Department to determine if a sediment sampling and testing work plan is necessary;
- (b) If the Department has determined that sampling and testing of sediment is required:
  - i) Submit to the Corps a copy of the Department's decision documenting that a sediment sampling plan has been reviewed and approved prior to commencing work, and a copy of the sediment sampling plan; and
  - ii) Implement the sediment sampling plan approved by the Department and any subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the

Department to meet water quality standards to protect water quality based on the sampling results.

3) The Certification Holder shall use a screen having a nominal mesh size of 1mm and an intake velocity not to exceed 0.5 ft/sec. during the Time of Year Restriction specified in the applicable MDE authorization when operating an intake structure.

4) The drilling fluid used in trenchless technology operations shall consist of water and bentonite clay. No additives are permitted without prior approval from the Department. The Certification Holder may submit to the Department for pre-approval a list of thickening additives to be stored on site in order to prevent delays in the drilling operation. Any additive must be certified in conformance with ANSI/NSF Standard 60 (Drinking Water Treatment Chemicals -Health Effects) and used in the manner indicated in the certification of the additive.

5) The Certification Holder shall notify the Department within 24 hours of any inadvertent returns from trenchless technology use and shall:

- (a) Cease operations; and
- (b) Implement an inadvertent return contingency plan approved by the Department.

6) The Certification Holder shall implement any plans and other requirements of the Department in the event of inadvertent return of drilling fluids or discharges of material transported by the utility line into waters of the United States.

7) The Certification Holder conducting activities in Historic Waterfowl Concentration Areas as identified on the Maryland Department of Natural Resource's MERLIN Online website (<https://gisapps.dnr.state.md.us/MERLIN/index.html>) under the "Living Resources" layer and labeled " Waterfowl Areas", shall apply, unless otherwise determined by the Department, a time of year restriction of November 15-March 1, inclusive of any year, but may exclude certain projects from the November 15 - March 1 closure, including:

- (a) Pier construction that is 150 linear feet or less in length
- (b) Riprap/revetment shoreline protection construction of 375 linear feet or less in length
- (c) Bulkhead construction or replacement that is 350 linear feet or less in length
- (d) Living shoreline construction that is 375 linear feet or less in length and has a maximum channelward extent of 35 feet or less
- (e) Reconfiguration of an existing marina when there is no dredging or increase in channelward encroachment beyond existing piers and associated structures

8) The Certification Holder may not conduct blasting for utility line installation unless authorized by the Department.

## GENERAL CONDITIONS

1) The Department may require submission of a formal request for an individual water quality certification for any project that has been determined by the Department --within 35 days of receipt by Maryland of a JOINT FEDERAL/STATE APPLICATION FOR THE ALTERATION OF ANY FLOODPLAIN, WATERWAY, TIDAL OR NONTIDAL WETLAND IN MARYLAND--to likely have a significant adverse effect upon water quality or degrade surface waters to ensure that existing and designated uses of the waterbody and downstream waters are not adversely impacted for the following activities in the MDSPGP-6:

- a(3) Piers- Commercial projects only
- a(5) Boat Ramp Construction, Repair, and Expansion- Commercial projects only
- a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters
- a(10) New Minor Dredging in Tidal Waters
- b(3) Bulkhead Repair or Replacement, including Stone Toe Protection
- c(1) Utility Lines
- c(2) Foundations for Overhead Utility Line Towers, Poles, and Anchors
- c(3) Utility Access Roads
- d) Linear Transportation Activities
- e(1) Minor Nontidal Fills
- e(2) Agricultural Activities
- e(8) Outfall Structures and Associated Intake Structures
- e(9) Residential, Commercial, and Institutional Development Activities
- e(10) New Stormwater Management Facilities
- f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other than Revetments
- f(2) Living Shorelines/Beach Nourishment
- f(3) New Bulkheads, including Stone Toe Protection
- g) Return Water from Upland Contained Disposal Areas

2) The Certification Holder shall meet all water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in tidal wetlands, nontidal waterways, their 100-year floodplains, nontidal wetlands, nontidal wetland buffers, or nontidal wetland expanded buffers to ensure that any discharges will not result in a failure to comply with water quality standards in COMAR 26.08.02. or other water quality requirements of state law or regulation.

3) The Certification Holder conducting activities which result in the loss of tidal or nontidal wetlands or waterways, shall implement compensatory mitigation in accordance with state issued authorizations.

- 4) The Certification Holder conducting activities with temporary impacts to nontidal and tidal wetlands shall ensure that such nontidal and tidal wetlands are restored to pre-existing contours and elevations and previous conditions with at least the same nontidal and tidal wetland acreage and equivalent function as indicated by a return to the same wetland type and in accordance with state issued authorizations.
- 5) The Certification Holder shall comply with monitoring required by any Department authorization to ensure that water quality standards and water quality requirements for waters of this State are met, in addition to monitoring required in the MDSPGP-6.
- 6) Activities which result in an earth disturbance subject to the requirements in Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01 shall have an erosion and sediment control plan approved by the appropriate approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended.
- 7) The disturbance of the bottom of the water and sediment transport into adjacent waters shall be minimized.
- 8) The Certification Holder shall adhere to the time of year restrictions, unless waived or amended by the Department, as identified in a state authorization.
- 9) The regulated activity shall be conducted so as not to restrict or impede the:
  - (a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water, or
  - (b) Passage of normal or expected high water flows;
- 10) The Certification Holder shall design and implement stream crossings to meet, at a minimum, the following performance criteria:
  - a. If practicable, a structure (for example, bridge or arched culvert) shall span the bank full wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel;
  - b. If a bridge spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less;
  - c. Water velocity and depth within the crossing structure shall match those observed

at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions;

- d. Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration, stabilization, etc.). Scour protection may not result in reduced fish passage and shall be avoided where possible;
- e. Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature; and
- f. Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.

11) The Certification Holder shall apply the following conditions to its project:

- a. Prevent sidcasting of excavated material into a Water of the United States. Excavated or other fill material shall be placed in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands, tidal wetlands, or nontidal waterways;
- b. Excavated material as backfill shall not be placed in the Water of the United States if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance;
- c. All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Perennial Ryegrass (*Lolium perenne*), Millet (*Setaria italica*), Barley (*Hordeum* sp.), Oats (*Avena* sp.), and/or Rye (*Secale cereale*). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Maryland Department of Environment, Nontidal Wetlands Division. Kentucky 31 fescue shall not be utilized in wetland or buffer areas. The area should be seeded and mulched to reduce erosion after construction activities have been completed in accordance with Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01, the Certification Holder shall have an erosion and sediment control plan approved by the appropriate

approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended;

12) The Certification Holder shall follow remedial measures required by the Department to ensure that the project is in compliance with water quality standards when:

- a) Conditions or performance standards required under this Certification or any Departmental authorizations are not met; or
- b) The Department determines that water quality standards may not be met at the project site.

13) The Certification Holder shall obtain and comply with all required state authorizations or approvals, including self-certifying General Permits issued by MDE, and shall comply with all conditions of such authorizations.

14) This Certification does not obviate the need to obtain and comply with required authorizations or approvals from State, federal or local agencies as required by law.

15) The proposed project shall be constructed in accordance with the approved final plan by the Department, or, if Department approval is not required, the plan approved by the ACOE; and its approved revisions.

16) All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of the United States.

17) This Certification does not authorize any injury to private property, any invasion of rights, or any infringement of federal, state, or local laws or regulations.

18) The Certification Holder shall allow authorized representatives of the Department access to the site of authorized activities during normal business hours to conduct inspections and evaluations of the operations and records necessary to assure compliance with this Certification.

19) This Certification is valid for the MDSPGP-6 identified herein until such time that the MDSPGP-6 expires and is not modified or administratively extended.

Failure to comply with these conditions shall constitute reason for MDE to suspend or revoke the Certification Holder’s authorization to conduct activities under this Certification may subject the Certification Holder to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

# **Maryland State Programmatic General Permit Coastal Zone Management (CZM) Conditions**

**ISSUED TO:** U.S. Army Corps of Engineers, Baltimore District  
2 Hopkins Plaza, Baltimore, MD 21201

**DETERMINATION DATE:** March 24, 2021

**PROJECT LOCATION:** Waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways.

**DESCRIPTION OF PROJECT:** The Maryland State Programmatic General Permit-6 (MDSPGP-6) applies to the discharge of dredged or fill material and/or the placement of structures into waters of the United States as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. The MDSPGP-6 is proposed to provide a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and satisfy other public interest review factors. Activities authorized by the MDSPGP-6 must be components of a single and complete project, including all attendant features both temporary and permanent, which individually and cumulatively result in no more than minimal adverse environmental impacts. Activities authorized under the MDSPGP-6 require compliance with all terms and conditions of the MDSPGP-6, including general conditions, activity-specific impact thresholds, and descriptions set out further herein. In addition, the Corps may add project-specific conditions to ensure that the adverse environmental effects are no more than minimal. These can include permit conditions such as time-of-year restrictions, use of best management practices, or compensatory mitigation requirements to offset authorized losses of waters of the United State so that the net adverse environmental effects are no more than minimal.

**COASTAL ZONE CONSISTENCY DETERMINATION  
BASED ON THE FOLLOWING CONDITIONS, THE DEPARTMENT HAS  
DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE  
PROPOSED MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-6  
(ATTACHMENTS 1) ARE CONSISTENT WITH THE STATE'S FEDERALLY  
APPROVED COASTAL ZONE MANAGEMENT PROGRAM, AS REQUIRED BY  
SECTION 307 OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972,  
AS AMENDED, PROVIDED THAT A PERSON CONDUCTING AN ACTIVITY UNDER  
THE MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-6 IN THE  
COASTAL ZONE CONSISTENCY DETERMINATION**



**Maryland State Programmatic General Permit, SPN-20-66**

**MARYLAND COASTAL ZONE SHALL COMPLY WITH ALL APPLICABLE ENFORCEABLE POLICIES (ATTACHMENT 2) UNDER THE APPROVED MARYLAND COASTAL ZONE MANAGEMENT PROGRAM. CONDITIONS**

1) The Department may require submission of a individual Coastal Zone Management Act consistency determination for any project that has been determined by the Department--within 35 days of receipt by Maryland of a JOINT FEDERAL/STATE APPLICATION FOR THE ALTERATION OF ANY FLOODPLAIN, WATERWAY, TIDAL OR NONTIDAL WETLAND IN MARYLAND-- to likely have a significant adverse effect upon water quality or degrade surface waters to ensure that existing and designated uses of the waterbody and downstream waters are not adversely impacts and the activities will not violate the approved enforceable policies of the Maryland Coastal Zone Management Program for the following activities in the MDSPGP-6:

a(3) Piers- Commercial projects only

a(5) Boat Ramp Construction, Repair, and Expansion- Commercial projects only

a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters

a(10) New Minor Dredging in Tidal Waters

b(3) Bulkhead Repair or Replacement, including Stone Toe Protection

c(1) Utility Lines

c(2) Foundations for Overhead Utility Line Towers, Poles, and Anchors

c(3) Utility Access Roads

d) Linear Transportation Activities

e(1) Minor Nontidal Fills

e(2) Agricultural Activities

e(8) Outfall Structures and Associated Intake Structures

e(9) Residential, Commercial, and Institutional Development Activities

e(10) New Stormwater Management Facilities

f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other than Revetments

f(2) Living Shorelines/Beach Nourishment

f(3) New Bulkheads, including Stone Toe Protection

g) Return Water from Upland Contained Disposal Areas

Enforceable Policies:

5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;

5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses

2) The person conducting an activity under MDSPGP-6 (Permittee) shall meet all performance standards and conditions required by the Department for any state issued authorization for activities in tidal wetlands, nontidal waterways, their 100-year floodplains, nontidal wetlands, nontidal wetland buffers, or nontidal wetland expanded buffers to ensure that any discharges which may enter waters of this State or the United States will not result in a failure to comply with water quality standards in COMAR 26.08.02.; other water quality requirements of state law

or regulation; and enforceable policies under the Maryland Coastal Zone Management Program; and local and State Critical Area Program approvals.

Enforceable Policies:

- 5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;
- 5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1 -3
- 5.2.1 Coastal Uses, limited to MDSPGP-6 activities which occur in waters of the United States;
- 5.2.1.1 - 5.2.1.29 Chesapeake and Atlantic Coastal Bays Critical Area
- 5.2.2 Tidal Wetlands
- 5.2.3 Nontidal Wetlands
- 5.2.6 Living Aquatic Resources

3) The Permittee shall apply the following conditions to their project:

- a) Activities which result in the loss of tidal or nontidal wetlands or waterways, shall implement compensatory mitigation in accordance with state issued authorizations.
- b) Ensure that temporary impacts to nontidal and tidal wetlands are restored to pre-existing contours and elevations and previous conditions with at least the same nontidal and tidal wetland acreage and equivalent function as indicated by a return to the same wetland type and in accordance with state authorizations.

Enforceable Policies:

- 5.1.10 Core Policies Quality of Life -Erosion and Sediment Control;
- 5.1.3.2, Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3, Flood Hazards & Community Resilience Policy 1 – No Adverse Impact;
- 5.2.1 Coastal Uses, limited to MDSPGP-6 activities which in occur in waters of the United States;
- 5.2.1.1 - 5.2.1.29 Chesapeake and Atlantic Coastal Bays Critical Area
- 5.2.2 Tidal Wetlands
- 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts

4) The Permittee conducting activities under a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters of MDSPGP-6 shall comply with the following enforceable policies:

- 5.2.1 Critical Area Policy 2 - Buffer Disturbance
- 5.2.1 Critical Area Policy 17- Buffer Management Plan

5) The Permittee conducting activities under a(10) New Minor Dredging in Tidal Waters shall comply with the following enforceable policy:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance
- 5.2.1 Critical Area Policy 17- Buffer Management Plan

6) The Permittee conducting activities under b) Repair and Maintenance Activities shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance;

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.1 Critical Area Policy 17- Buffer Management Plan
- 5.2.1 Critical Area Policy 26 - Cutting or Clearing Trees in the Buffer

7) The Permittee conducting activities under c) Underground and Overhead Utility Lines shall comply with the following relevant enforceable policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
- 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
- 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts;
- 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14;
- 5.3.4 Oil and Natural Gas Facilities Policies 4-6.

8) The Permittee conducting activities under e(1) Minor Nontidal Fills, in addition to conditions 2)-3) above, shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
  - 5.2.1 Critical Area Policy 2 – Buffer Disturbance;
  - 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
  - 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
  - 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
  - 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
  - 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
  - 5.2.1 Critical Area Policy 11 – Intensely Developed Areas; and
  - 5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.
  - 5.2.1 Critical Area Policy 17 – Buffer Management Plan; and
- For mining activities, the additional enforceable policies:

- 5.2.1 Critical Area Policy 18 – Protection of Critical Area from Surface Mining Pollution
- 5.2.1 Critical Area Policy 19 – Reclamation Requirements for Mining;
- 5.2.1 Critical Area Policy 20 – Restrictions on Sand & Gravel Operations; and
- 5.2.1 Critical Area Policy 21 - Prohibition of Wash Plants in Buffer.

9) The Permittee conducting activities under e(2) Agricultural Activities shall comply with the following enforceable policy limited to those areas which have foreseeable coastal effect to waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:  
 5.2.1 Critical Area Policy 25 - Best Management Practices for Agriculture,

10) The Permittee conducting activities under e(9) Residential, Commercial, and Industrial Development Activities shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:  
 5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or  
 5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas

11) The Permittee conducting activities under e(10) New Stormwater Management Facilities shall obtain and comply with the appropriate stormwater management approval authority authorization and ensure that discharges from the constructed facility do not:

- (a) Violate water quality standards;
- (b) Result in erosive flows downstream; and
- (c) Fail to comply with the following enforceable policy;  
 5.1.3 Water Resources Protection & Management Policy 8 – Stormwater Management; and

a) Comply with the following enforceable policies for activities in Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

- 5.1.3 Water Resources Protection & Management Policy 8 – Stormwater Management;
- 5.2.1 Critical Area Policy 11 -Intensely Developed Areas;
- 5.2.1 Critical Policy 12 -Limited Development Areas & Resource Conservation Areas

12) The Permittee conducting activities under Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation for Aquatic Resource Impacts authorized under the MDSPGP-6, and not covered under Nationwide Permit #53, Removal of Lowhead Dams, that otherwise qualify for authorization or mitigation under the MDSPGP-6 and involve the removal of lowhead dams shall:

- a) Submit to the Corps documentation that the Certification Holder has consulted with the Department to determine if a sediment sampling and testing work plan is necessary;
- b) If the Department has determined that sampling and testing of sediment is required:
  - i) Submit to the Corps a copy of the Department’s decision documenting that a sediment sampling plan has been reviewed and approved prior to commencing work, and a copy of the sediment sampling plan; and

ii) Implement the sediment sampling plan approved by the Department and any subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results.

c) Comply with the following Enforceable Policies:

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;

5.1.4. Flood Hazards & Community Resilience Policies 1-3;

5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;

5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;

5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts; and

5.2.6 Living Aquatic Resources Policies 1-4 and 6-14; and

d) The Permittee conducting activities under e (11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation for Aquatic Resource Impacts in addition to 12 a) – c) above, limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, shall comply with the following Enforceable Policies:

5.2.1 Critical Area Policy 1 – Scope of the Buffer;

5.2.1 Critical Area Policy 2 – Buffer Disturbance;

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;

5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas; and

5.2.1 Critical Area Policy 17 – Buffer Management Plan

13) The Permittee conducting activities under f) Shoreline and Stream Bank Stabilization Activities shall comply with the following enforceable policies:

5.2.6 Living Aquatic Resources Policy 4 – Fish Passage;

5.2.6 Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV);

5.2.6 Living Aquatic Resources Policy 9 – Protection of Natural Oyster Bars;

5.2.6 Living Aquatic Resources Policy 10 – Protection of Oyster Aquaculture Leases;

5.2.6 Living Aquatic Resources Policy 11 – Genetically Modified Organisms (GMOs) Are Prohibited in State Waters;

5.2.6 Living Aquatic Resources Policy 12 – Control of Nonnative Aquatic

Organisms;

5.2.6 Living Aquatic Resources Policy 14 – Nonnative Oysters Prohibited in State Waters

14) The Permittee conducting activities under f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other Than Revetments shall comply with the following enforceable policies:

5.2.1 Critical Area Policy 2- Buffer Disturbance

5.2.1 Critical Area Policy 17- Buffer Management Plan

15) The Permittee conducting activities under f(2) Living Shorelines/Beach Nourishment shall comply with the following enforceable policies:

5.2.1 Critical Area Policy 2- Buffer Disturbance

5.2.1 Critical Area Policy 17- Buffer Management Plan

16) The Permittee conducting activities under f) Shoreline and Stream Bank Stabilization Activities, limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, shall comply with the following enforceable policies in additions to enforceable policies in 13) above:

5.2.1 Critical Area Policy 2 – Buffer Disturbance; and

5.2.1 Critical Area Policy 17 – Buffer Management Plan;

17) Activities which result in an earth disturbance subject to the requirements in Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01 shall have an erosion and sediment control plan approved by the appropriate approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended.

Enforceable Policy:

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control

18) The disturbance of the bottom of the water and sediment transport into adjacent State waters shall be minimized.

Enforceable Policies:

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;

5.1.4. Flood Hazards & Community Resilience Policies 1-3;

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;

5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;

5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;

5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;

5.2.6 Living Aquatic Resources Policies 1-4 and 6-14;

19) The Certification Holder shall adhere to the time of year restrictions, unless waived or amended by the Department, as identified in a state authorization.

Enforceable Policies:

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;

5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams

5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas

5.2.6 Living Resources Policies 1-9

20) The Permittee conducting activities in Historic Waterfowl Concentration Areas as identified on the Maryland Department of Natural Resource's MERLIN Online website (<https://gisapps.dnr.state.md.us/MERLIN/index.html>) under the "Living Resources" layer and labeled " Waterfowl Areas", shall apply, unless otherwise determined by the Department, a time of year restriction of November 15-March 1, inclusive of any year, but may exclude certain projects from the November 15 - March 1 closure, including:

(a) Pier construction that is 150 linear feet or less in length

(b) Riprap/revetment shoreline protection construction of 375 linear feet or less in length

(c) Bulkhead construction or replacement that is 350 linear feet or less in length

(d) Living shoreline construction that is 375 linear feet or less in length and has a maximum channelward extent of 35 feet or less

(e) Reconfiguration of an existing marina when there is no dredging or increase in channelward encroachment beyond existing piers and associated structures

Enforceable Policies:

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;

5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams

5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas

5.2.6 Living Resources Policies 1-9

21) The regulated activity shall be conducted so as not to restrict or impede the:

(a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water, and

(b) Passage of normal or expected high water flows.

Enforceable Policies:

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

5.1.4. Flood Hazards & Community Resilience Policies 1-3

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation
- 5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Los
- 5.2.6 Living Resources Policies 1-9

22) Stream crossings shall design and implement stream crossings to meet, at a minimum, the following performance criteria:

- a. If practicable, a structure (for example, bridge or arched culvert) shall span the bank full wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel;
- b. If a bridge spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less;
- c. Water velocity and depth within the crossing structure shall match those observed at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions;
- d. Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration, stabilization, etc.). Scour protection may not result in reduced fish passage and shall be avoided where possible;
- e. Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature; and
- f. Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.

Enforceable Policies:

- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;



- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation
- 5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Los
- 5.2.6 Living Resources Policies 1-9

23) The Permittee shall obtain and comply with all required authorizations or approvals, including self-certifying General Permits issued by MDE, and shall comply with all conditions of such authorizations.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation
- 5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Los
- 5.2.6 Living Resources Policies 1-9

24) This Determination does not obviate the need to obtain and comply with required authorizations or approvals from State, federal or local agencies as required by law.

Enforceable Policies: All Enforceable Policies

25) The proposed project shall be constructed in accordance with the approved final plan by the Department, or, if Department approval is not required, the plan approved by the ACOE; and its approved revisions.

Enforceable Policies:

- 5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control;
- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses; 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;

- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
- 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
- 5.2.4 Forests Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts;
- 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14

26) All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of the United States.

- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses;
- 5.1.4. Flood Hazards & Community Resilience Policies 1-3;
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas; 5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation;
- 5.2.3 Non-Tidal Wetlands; Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values;
- 5.2.6 Living Aquatic Resources Policies 1-4 and 6-14

27) This Determination does not authorize any injury to private property, any invasion of rights, or any infringement of federal, state, or local laws or regulations.

Enforceable Policies: All Enforceable Policies

28) The Permittee shall allow authorized representatives of the Department access to the site of authorized activities during normal business hours to conduct inspections and evaluations of the operations and records necessary to assure compliance with this Determination.

Enforceable Policies: All Enforceable Policies

29) This Determination is valid for the activities under MDSPGP-6 identified herein until such time that the MDSPGP-6 expires and is not administratively extended.

Enforceable Policies: All Enforceable Policies

Failure to comply with these conditions shall constitute reason for MDE to suspend or revoke the Permittee’s authorization to conduct activities under this Determination and may subject the Permittee to criminal and/or civil penalties or other enforcement action in accordance with applicable law.