DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

April 11, 2025

Operations Division

Maryland Department of the Environment
Water & Science Administration Regulatory Services Section
Attention: Water Quality Certification
Montgomery Park Business Center
1800 Washington Boulevard
Suite 430
Baltimore, MD 21230

Dear Madam:

I am writing in regard to the Department of the Army Programmatic General Permit for the State of Maryland (MDSPGP)-6, which is due to expire September 30, 2026. On December 16, 2024, the United States Army Corps of Engineers issued Special Public Notice, SPN-24-38, proposing to reissue the MDSPGP-6 with modifications. The proposed, modified MDSPGP-7 would authorize activities in waters of the United States, including jurisdictional wetlands, for an additional five-year period.

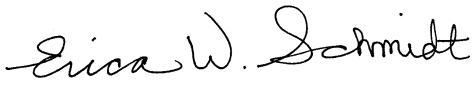
The Army Corps of Engineers North Atlantic Division Baltimore District (Corps) request determination of Coastal Zone Management Act (CZMA) consistency, pursuant to Section 307(c)(1) of the CZMA for MDSPGP-7 activities within or affecting the coastal zone of the State of Maryland (Enclosure 1) except: 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. These excepted areas within Maryland waters identified above fall within the Corps Philadelphia District's regulatory geographic boundaries.

The Corps has determined that the proposed MDSPGP-7 is, to the maximum extent practicable, consistent with state CZMA programs. The proposed MDSPGP-7 will minimally affect land, or water uses or natural resources of Maryland due to the restrictive requirements outlined in the proposed, in activity specific, and general conditions of the draft MDSPGP-7 (Enclosure 2).

I also ask for your final determination regarding CZMA consistency. As provided by applicable regulations at 15 CFR Part 930, your final determination on CZMA consistency for the MDSPGP-7 must be submitted within 180 days of this request. If you do not concur or object to CZMA consistency within 180 days, I will presume you agree with our CZMA consistency determination.

Thank you for your attention regarding this matter. We remain available to discuss issues or proposed conditions you may be considering for the MDSPGP-7. We look forward to working with your office on this effort. Contact Mrs. Alexis Kolarz or Mr. Zachary Fry via email at alexis.l.kolarz@usace.army.mil or zachary.t.fry@usace.army.mil.

Sincerely,



Erica Schmidt
Acting Permit Process Project Manager
Regulatory Branch

Enclosures

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

ENCLOSURE 1: CZMA

Coastal Zone Management Act (CZMA) Consistency Determination

On December 13, 2024, the U.S. Army Corps of Engineers, Baltimore District (Baltimore District) provided your office with the December 16, 2024, Public notice for the proposal by the U.S. Army Corps of Engineers to reissue the Maryland State Programmatic General Permit-7 (MDSPGP-7). The Public notice was the Corps' determination of Coastal Zone Management Act (CZMA) consistency, pursuant to Section 307(c)(1) of the CZMA for MDSPGP-7 activities within or affecting the coastal zone of the State of Maryland.

On December 16, 2024, the Baltimore District issued Special Public Notice (SPN) #24-38 announcing the proposed changes for the reissuance of the MDSPGP-7. The proposed modified MDSPGP-7 is designed to continue to authorize certain activities formerly covered by the NWP program. The modified MDSPGP-7 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. The State of Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a State-wide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require Maryland Department of the Environment (MDE) to apply evaluation criteria consisting of alternatives analyses (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation for wetland impacts. The general permit designed to authorize certain activities that have no more than minimal individual and cumulative adverse environmental effects and generally comply with related laws, including but not limited to, Section 10 of the Rivers and Harbors Act, Section 401 and 404 of the Clean Water Act, Section 307(c) of the Coastal Zone Management Act, the Endangered Species Act, the National Historic Preservation Act, the Manguson-Stevens Fishery and Conservation and Management Act, and the Fish and Wildlife Coordination Act. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. If the MDSPGP-6 is reissued as MDSPGP-7, the Baltimore District Engineer will reevaluate the MDSPGP-7 within five years to determine if activities have been authorized in accordance with the requirements of the MDSPGP-7. Programmatic general permits are authorized for a five-year period at which time they must be re-evaluated for their impacts on the aquatic environment.

The proposed reissuance of the MDSPGP-7 is a federal general permit for categories of activities over a five-year period; therefore, at this time it is not possible to provide the plans, locations, and descriptions in advance of the actual applications. The activities within the MDSPGP-6 have been in place for over four years. It is expected that the activities proposed under the reissuance of the MDSPGP would be similar in nature taking in to account the proposed

revisions to the activities. The proposed revisions are meant to increase the efficiency of the Programmatic permit and streamline review and approval of inherently beneficial activities while continuing to assure the authorized activities are minimal in nature both individually and cumulatively. As with the existing MDSPGP-6, plans and descriptions for activities proposed to be authorized under the reissuance of the MDSPGP-7 will be included in a Joint Permit Application (JPA). The JPA will be provided to the Maryland Department of the Environment (MDE) for review and approval for any required state authorizations.

This document provides supplemental information for the Baltimore District's Consistency Determination under CZMA section 307(c)(1) and 15 CFR Part 930, subpart C, for the revision and reissuance of the MDSPGP-7. The information in this Consistency Determination is provided pursuant to 15 CFR §930.39.

Public and Agency Participation

In accordance with 33 CFR §325.3, the general public and other federal, state, and local agencies are invited to participate with comments in review of the Baltimore District proposal to revise and reissue the MDSPGP-7. In the December 16, 2024 Public Notice, the Corps requested comments on the proposed reissuance of the MDSPGP-7. The Baltimore District's public notice #24-38 of this proposed action was published on the Baltimore District's website from December 16, 2024, through January 30, 2025. The substantive comments received from the public and the federal and state agencies will be considered and used to make changes in the proposed suspensions and regional conditions, as necessary.

The Baltimore District has determined that the proposed MDSPGP-7 is, to the maximum extent practicable, consistent with state CZMA programs. The proposed MDSPGP-7 will minimally affect land or water uses or natural resources of Maryland due to the restrictive requirements outlined in the proposed, in activity specific, and general conditions of the MDSPGP-7.

The Corp's responses to Maryland Department of the Environment's CZMA Enforceable Policies and the proposed MDSPGP-7:

5.1 Core Policies

5.1.1 Quality of Life

Quality of Life Policy 1 – Air Quality. It is State policy to maintain that degree of purity of air resources which will protect the health, general welfare, and property of the people of the State. MDE (C9) Md. Code Ann., Envir. §§ 2-102 to -103.

Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing

Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps.

Quality of Life Policy 2 - Noise. The environment shall be free from noise which may jeopardize health, general welfare, or property, or which degrades the quality of life. MDE (C9) COMAR 26.02.03.02.

The use of heavy machinery and construction techniques may cause temporary impact on sensitive noise receptors located close to the construction site. Most machinery is equipped with standard acceptable noise muffling devices, which should minimize these potential impacts. Further, the normal operating hours for this type of construction work is limited to the daylight working hours. Both of these measures should minimize the potential temporary construction noise impacts.

Quality of Life Policy 3 – Protection of State Wild Lands. The unique ecological, geological, scenic, and contemplative aspects of State wild lands shall not be affected in a manner that would jeopardize the future use and enjoyment of those lands as wild. DNR (C7) Md. Code Ann., Nat. Res. §§ 5-1201, -1203(a).

Issuance or modification of a SPGP is based on a general assessment of the effects on the public interest and environmental factors that are likely to occur as a result of using this MDSPGP-7 to authorize activities in waters of the U.S., including navigable waters and wetlands. As such, this assessment must be predictive in general terms. The SPGP must comply with the 404(b)(1) guidelines in 40 CFR 230.7. Since the MDSPGP-7 authorizes activities on a statewide basis, projects eligible for MDSPGP-7 authorization may be constructed in a wide variety of environmental settings. Therefore, it is difficult to predict all of the impacts that may be associated with each activity authorized by the MDSPGP-7. However, the potential adverse effects of the MDSPGP-7 will be controlled by the terms and conditions of the MDSPGP-7, as well as the impact limits and activity-specific requirements described in the MDSPGP-7 Category A and Category B list of activities. For instance, the MDSPGP-7 provides for coordination under Section 7 of the Endangered Species Act (ESA) to ensure that threatened and endangered species will not be jeopardized and that their critical habitat will not be destroyed. Moreover, the MDSPGP-7 provides for case-by-case review by the District for Category B projects. Category B provides an opportunity for agency and, in some cases, public review. Finally, an additional provision of the MDSPGP-7 allows the District Engineer to 1) assert discretionary authority and require an individual permit for a specific project; 2) modify the MDSPGP-7 for specific projects by requiring special conditions on a case-by-case basis; and 3) take action to suspend or revoke the MDSPGP-7 and individual project verifications made under the MDSPGP-7. These provisions, in addition to the terms and conditions of the MDSPGP-7

and the impact limits and activity-specific requirements of the Category A and Category B list, ensure that work authorized by the MDSPGP-7 will have no more than minimal individual and cumulative adverse effects on the wild land environments.

Quality of Life Policy 4 – Protection of State Lands & Cultural Resources. The safety, order, and natural beauty of State parks and forests, State reserves, scenic preserves, parkways, historical monuments and recreational areas shall be preserved. DNR (B1) Md. Code. Ann., Nat. Res. § 5-209.

The MDSPGP-7 would be subjected to the same screening process as the MDSPGP-6, potential projects that would affect state park and forests, or historic monuments would be tagged for further coordination. Any activity that would cause these effects is excluded from the MDSPGP-7's coverage until the cultural resource issues have been addressed. The Corps shall determine whether project-specific National Historic Preservation Act Section 106 consultation is required. The interagency screening process and the State's regulatory role ensure that the MDSPGP-7 complies with Section 106 of the National Historic Preservation Act (NHPA).

Quality of Life Policy 5 Natural Character & Scenic Value of Rivers & Waterways. The natural character and scenic value of a river or waterway must be given full consideration before the development of any water or related land resources including construction of improvements, diversions, roadways, crossings, or channelization. MDE/DNR (C7) Md. Code Ann., Nat. Res. § 8-405; COMAR 26.17.04.11.

The construction of projects applicable under the MDSPGP-7 alter the visual character of some waterways. The extent and perception of the alteration will vary depending upon the nature of the surrounding area and the values of the public using the waterbody.

The MDSPGP-7 has a best management practice for wild and scenic rivers as follows:
No activity is authorized under the MDSPGP-7 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).

Quality of Life Policy 6 – Natural Flow of Scenic & Wild Rivers. A dam or other structure that impedes the natural flow of a scenic or wild river may not be constructed, operated, or maintained, and channelization may not be undertaken, until the applicant considers alternatives less harmful to the scenic and wild resource. Construction of an impoundment upon a scenic or wild river is contrary to the public interest, if that project

floods an area of unusual beauty, blocks the access to the public of a view previously enjoyed, or alters the stream's wild qualities. MDE/DNR (C7) Md. Code Ann., Nat. Res. § 8-406; COMAR 26.17.04.11.

As stated above, the MDSPGP-7 has a best management practice for wild and scenic rivers as follows: No activity is authorized under the MDSPGP-7 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).

Quality of Life Policy 7 – Atlantic Coast Development. Any land clearing, construction activity, or the construction or placement of permanent structures is prohibited within the Beach Erosion Control District except the construction and installation of a qualified submerged renewable energy line, if the project does not result in any significant permanent environmental damage to the Beach Erosion Control District and is not constructed or installed within the Assateague State Park, and any project or activity specifically for storm control, beach erosion and sediment control, or maintenance projects designed to benefit the Beach Erosion Control District. MDE/DNR (B1) Md. Code Ann., Nat. Res. § 8-1102.

Issuance or modification of a SPGP is based on a general assessment of the effects on the public interest and environmental factors that are likely to occur as a result of using this MDSPGP-7 to authorize activities in waters of the U.S., including navigable waters and wetlands. As such, this assessment must be predictive in general terms. The SPGP must comply with the 404(b)(1) guidelines in 40 CFR 230.7. Since the MDSPGP-7 authorizes activities on a statewide basis, projects eligible for MDSPGP-7 authorization may be constructed in a wide variety of environmental settings. Therefore, it is difficult to predict all of the impacts that may be associated with each activity authorized by the MDSPGP-7. However, the potential adverse effects of the MDSPGP-7 will be controlled by the terms and conditions of the MDSPGP-7, as well as the impact limits and activity-specific requirements described in the MDSPGP-7 Category A and Category B list of activities. For instance, Category B review by the Corps is required for Category A projects that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act, the Tidal Wetlands Act, or the Waterway Construction Act, or that have been denied WQC or a CZC Certification. This activity also applies to Category A projects that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA. This activity also applies to projects that have not themselves been denied one of these authorizations, but that are part of a project that has been denied. Projects that exceed the Category A individual activities'

impact limits and requirements and that have been denied one of these authorizations, or that are part of a project that has been denied, will be reviewed under Category B, or alternate Corps permit review procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

Furthermore, the general condition for **Coastal Barrier Resources Act (CBRA)** states**:** 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-7 must comply with the CBRA. More detailed information can be found at: http://www.fws.gov/cbra.

Quality of Life Policy 8 – Integrity & Natural Character of Assateague Island. Activities which will adversely affect the integrity and natural character of Assateague Island will be inconsistent with the State's Coastal Management Program, and will be prohibited. MDE/DNR (B1) Md. Code. Ann., Nat. Res. §§ 5-209, 8-1102.

General condition for **National Lands** states**:** Activities authorized by the MDSPGP-7 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).

Quality of Life Policy 9 – Public Outreach. An opportunity for a public hearing shall be provided for projects in non-tidal waters that dredge, fill, bulkhead, or change the shoreline; construct or reconstruct a dam; or create a waterway, except in emergency situations. MDE (A3) COMAR 26.17.04.13A.

Public comment is requested when projects are placed on public notice. Certain MDSPGP-7 Category A activities may require a public notice under State regulations (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, the project is located in Use III or IV waters or other sensitive habitats identified by State law or regulation). Under these circumstances, MDE will place the project on State public notice, in response to which the Corps may either provide comments or invoke discretionary authority to require an alternate Corps permit review because of concerns for the aquatic environment or for any other public interest factor. At the conclusion of MDE's review, MDE will provide written verification to the applicant that the activity is eligible for authorization under the MDSPGP-7 and the work can proceed as a Category A activity, provided all required State and local authorizations are obtained, and the Corps is not requiring an alternate Corps permit review.

Quality of Life Policy 10 – Erosion & Sediment Control. Soil erosion shall be prevented to preserve natural resources and wildlife; control floods; prevent impairment of dams and reservoirs; maintain the navigability of rivers and harbors; protect the tax base, the public lands, and the health, safety and general welfare of the people of the State, and to enhance their living environment. MDA (C4) Md. Code Ann., Agric. § 8-102(d).

Activity specific conditions where applicable state that excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States. Immediately after completion of construction of the utility project through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

General conditions that apply include:

Removal of Temporary Fill, Structures, and Mats:

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 (12) months after commencing the temporary impacts.
b. 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.
c. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
d. 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.
e. 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.
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.

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Quality of Life Policy 11 – Safeguards for Outer Continental Shelf Development. Operations on the Outer Continental Shelf must be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or property, or which may endanger life or health. (B2) Md. Code Ann., Envir. §§ 17-101 to -403; COMAR 26.24.01.01; COMAR 26.24.02.01, .03; COMAR 26.24.05.01.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the MDSPGP-7, 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.

5.1.2 Waste & Debris Management

Waste & Debris Management Policy 1 – Hazardous Waste Management. Controlled hazardous substances may not be stored, treated, dumped, discharged, abandoned, or otherwise disposed anywhere other than a permitted controlled hazardous substance facility or a facility that provides an equivalent level of environmental protection. MDE (D4) Md. Code Ann., Envir. § 7-265(a).

General Condition **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Waste & Debris Management Policy 2 – Hazardous Waste Management in Port of Baltimore. A person may not introduce in the Port of Baltimore any hazardous materials, unless the cargo is properly classed, described, packaged, marked, labeled, placarded, and approved for highway, rail, or water transportation. MDOT (D3) COMAR 11.05.02.04A.

Not applicable, the MDSPGP-7 does not have authority or include this action.

5.1.3 Water Resources Protection & Management

Water Resources Protection & Management Policy 1 – Pollution Discharge Permit. No one may add, introduce, leak, spill, or emit any liquid, gaseous, solid, or other substance that will pollute any waters of the State without State authorization. MDE (A5) Md. Code Ann., Envir. §§ 4-402, 9-101, 9-322.

General condition **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Water Resources Protection & Management Policy 2 – Protection of Designated Uses. All waters of the State shall be protected for water contact recreation, fish, and other aquatic life and wildlife. Shellfish harvesting and recreational trout waters and waters worthy of protection because of their unspoiled character shall receive additional protection. MDE (A1) COMAR 26.08.02.02.

Section 404(c) of the CWA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Applicable to all MDSPGP-7 activities, General Condition **Spawning Areas** requires all 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-7. The general condition **Waterfowl Breeding and Wintering Areas** requires all discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable. General condition **Environmental Values** requires that the permitee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

Most causes and sources of impairment on water quality in waters and wetlands are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Non-point sources of pollution to streams and wetlands from farms, roads, and urban areas are not controlled by the MDSPGP-7 because the Section 404 of the Clean Water Act only requires permits for point source discharges of dredged or fill material regulated under Section 404. Habitat alterations or water quality impairments may be a result of activities regulated under Section 404 and Section 10 when they involve discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters. However, hydrologic and water quality impairments and habitat alterations may also occur as a result of activities not regulated under these two statutes (e.g., removal of vegetation from upland riparian areas, indirect effects of changes in upland land use, etc.).

Water Resources Protection & Management Policy 3 – Prohibition of Harmful Toxic Impacts. The discharge of any pollutant which will accumulate to toxic amounts during the expected life of aquatic organisms or produce deleterious behavioral effects on aquatic organisms is prohibited. MDE (A4) COMAR 26.08.03.01.

The general condition **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Water Resources Protection & Management Policy 4 – Pre-Development Discharge Permit Requirement. Before constructing, installing, modifying, extending, or altering an outlet or establishment that could cause or increase the discharge of pollutants into the waters of the State, the proponent must hold a discharge permit issued by the Department of the Environment or provide an equivalent level of water quality protection. MDE (D6) Md. Code Ann., Envir. § 9-323(a).

Under the scope of activities II B. *Activities not authorized by the MDSPGP-7* 4. Activities that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have been denied Water Quality Certification (WQC) or a Coastal Zone Consistency (CZC) determination. Activities that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP-7 without prior review and approval under the appropriate category of the MDSPGP-7, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP-7 without prior approval by the Corps.

The general condition **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Water Resources Protection & Management Policy 5 – Use of Best Available Technology or Treat to Meet Standards. The use of best available technology is required for all permitted discharges into State waters, but if this is insufficient to comply with the established water quality standards, additional treatment shall be required and based on waste load allocation. MDE (D4) COMAR 26.08.03.01C.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the within the permit. 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.

The general condition **Environmental Values** states: The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

Water Resources Protection & Management Policy 6 – Control of Thermal Discharges. Thermal discharges shall be controlled so that the temperature outside the mixing zone (50 feet radially from the point of discharge) meets the applicable water quality criteria or discharges comply with the thermal mixing zone criteria. MDE (D4) COMAR 26.08.03.03C.

The general condition **Water Quality Certification** states: Permittees must satisfy any conditions imposed by the State of Maryland and EPA, where applicable, in their Water Quality Certification for the MDSPGP-7 pursuant to Section 401 of the Clean Water Act. If a project is anticipated to have thermal effects to water quality, it is possible for either MDE or the Corps to authorize special conditions to comply with the thermal mixing zone criteria.

Furthermore, under the scope of activities II B. *Activities not authorized by the MDSPGP-7* 4. Activities that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have been denied Water Quality Certification (WQC) or a Coastal Zone Consistency (CZC) determination. Activities that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP-7 without prior review and approval under the appropriate category of the MDSPGP-7, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP-7 without prior approval by the Corps.

Water Resources Protection & Management Policy 7 – Pesticide Storage. Pesticides shall be stored in an area located at least 50 feet from any water well or stored in secondary containment approved by the Department of the Environment. MDA (C4) COMAR 15.05.01.06.

Most causes and sources of impairment on water quality in waters and wetlands are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Non-point sources of pollution to streams and wetlands from farms, roads, and urban areas are not controlled by the MDSPGP-7 because the Section 404 of the Clean Water Act only requires permits for point source discharges of dredged or fill material regulated under Section 404. Habitat alterations or water quality impairments may be a result of activities regulated under Section 404 and Section 10 when they involve discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters.

Water Resources Protection & Management Policy 8 – Stormwater Management. Any development or redevelopment of land for residential, commercial, industrial, or

institutional purposes shall use small-scale non-structural stormwater management practices and site planning that mimics natural hydrologic conditions, to the maximum extent practicable. Development or redevelopment will be consistent with this policy when channel stability and 100 percent of the average annual predevelopment groundwater recharge are maintained, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary. MDE (C9) Md. Code Ann., Envir. § 4-203; COMAR 26.17.02.01, .06.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the MDSPGP-7, 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.

Most causes and sources of impairment on water quality in waters and wetlands are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Non-point sources of pollution to streams and wetlands from farms, roads, and urban areas are not controlled by the MDSPGP-7 because the Section 404 of the Clean Water Act only requires permits for point source discharges of dredged or fill material regulated under Section 404. Habitat alterations or water quality impairments may be a result of activities regulated under Section 404 and Section 10 when they involve discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters. However, hydrologic and water quality impairments and habitat alterations may also occur as a result of activities not regulated under these two statutes (e.g., removal of vegetation from upland riparian areas, indirect effects of changes in upland land use, etc.).

Water Resources Protection & Management Policy 9 – Unpermitted Dumping of Used Oil. Unless otherwise permitted, used oil may not be dumped into sewers, drainage systems, or any waters of the State or onto any public or private land. MDE (D4) Md. Code Ann., Envir. § 5-1001(f).

Not applicable, this activity is not regulated by the MDSPGP-7.

Water Resources Protection & Management Policy 10 – Toxicity Monitoring. If material being dumped into Maryland waters or waters off Maryland's coastline has demonstrated actual toxicity or potential for being toxic, the discharger must perform biological or chemical monitoring to test for toxicity in the water. MDE (A5) COMAR 26.08.03.07(D); COMAR 26.08.04.01.

Individual evaluation and testing for the presence of contaminants will normally not be required because the terms and conditions of the MDSPGP-7 specify the types of discharges that are authorized as well as those that are prohibited. If a situation warrants, provisions of the MDSPGP-7 allow the Corps to further specify authorized through or prohibited discharges and require testing through special conditions of the permit.

In addition, General Condition **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Water Resources Protection & Management Policy 11 – Public Outreach. Public meetings and citizen education shall be encouraged as a necessary function of water quality regulation. MDE (A2) COMAR 26.08.01.02E(3).

Public comment and involvement are requested when projects are placed on public notice. Certain MDSPGP-7 Category A activities may require a public notice under State regulations (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, the project is located in Use III or IV waters or other sensitive habitats identified by State law or regulation). Under these circumstances, MDE will place the project on State public notice, in response to which the Corps may either provide comments or invoke discretionary authority to require an alternate Corps permit review because of concerns for the aquatic environment or for any other public interest factor. At the conclusion of MDE's review, MDE will provide written verification to the applicant that the activity is eligible for authorization under the MDSPGP-7 and the work can proceed as a Category A activity, provided all required State and local authorizations are obtained, and the Corps is not requiring an alternate Corps permit review.

Water Resources Protection & Management Policy 12 – No Adverse Impact from Water Appropriation. Any water appropriation must be reasonable in relation to the anticipated level of use and may not have an unreasonable adverse impact on water resources or other users of the waters of the State. MDE (C9) COMAR 26.17.06.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

In addition, general condition **Management of Water Flows** states: 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

The General Condition **Fills Within 100-Year Floodplain** requires the activity to comply with applicable FEMA-approved state or local floodplain management requirements. The requirements will help to ensure that the activities authorized by the MDSPGP-7 will have no more than minimal adverse effects on flood hazards and water appropriation concerns.

5.1.4 Core Policies – Flood Hazards & Community Resilience

Flood Hazards & Community Resilience Policy 1 – No Adverse Impact. Projects in coastal tidal and non-tidal flood plains which would create additional flooding upstream or downstream, or which would have an adverse impact upon water quality or other environmental factors, are contrary to State policy. MDE (C2) Md. Code Ann., Envir. § 5-803; COMAR 26.17.05.04A.

General condition **Fills Within 100-Year Floodplain** states that permittees must comply with applicable Federal Emergency Management Agency-approved State or local floodplain management requirements.

Flood Hazards & Community Resilience Policy 2 – Non-Tidal Waters and Non-Tidal Floodplains. The following policies apply to projects in non-tidal waters and non-tidal floodplains, but not non-tidal wetlands. MDE (C2) COMAR 26.17.04.01, .07,.11.

> **Flood Hazards & Community Resilience Policy 2a** – **1-Foot Freeboard Above 100-year Flood**. Proposed floodplain encroachments, except for roadways, culverts, and bridges, shall be designed to provide a minimum of 1 foot of freeboard above the elevation of the 100-year frequency flood event. In addition, the elevation of the lowest floor of all new or substantially improved residential, commercial, or industrial structures shall also be at least 1 foot above the elevation of the 100-year frequency flood event.
>
> **Flood Hazards & Community Resilience Policy 2b – Stability of Unlined Earth Channels.** Proposed unlined earth channels may not change the tractive force associated with the 2-year and the 10-year frequency flood events, by more than

10 percent, throughout their length unless it can be demonstrated that the stream channel will remain stable.

Flood Hazards & Community Resilience Policy 2c – Stability of Lined Channels. Proposed lined channels may not change the tractive force associated with the 2-year and the 10-year frequency flood events, by more than 10 percent, at their downstream terminus unless it can be demonstrated that the stream channel will remain stable.

Flood Hazards & Community Resilience Policy 2d – Prohibition of Dam Construction in High Risk Areas. Category II, III, or IV dams may not be built or allowed to impound water in any location where a failure is likely to result in the loss of human life or severe damage to streets, major roads, public utilities, or other high value property.

Flood Hazards & Community Resilience Policy 2e – Prohibition of Projects That Increase Risk Unless Mitigation Requirements Are Met. Projects that increase the risk of flooding to other property owners are generally prohibited, unless the area subject to additional risk of flooding is purchased, placed in designated flood easement, or protected by other means acceptable to the Maryland Department of the Environment.

Flood Hazards & Community Resilience Policy 2f – Prohibition of Construction or Substantial Improvements in 100-Year Floodplain. The construction or substantial improvement of any residential, commercial, or industrial structures in the 100-year frequency floodplain and below the water surface elevation of the 100-year frequency flood may not be permitted. Minor maintenance and repair may be permitted. The modifications of existing structures for flood-proofing purposes may be permitted. Flood-proofing modifications shall be designed and constructed in accordance with specifications approved by the Maryland Department of the Environment.

Flood Hazards & Community Resilience Policy 2g – Channelization Is Discouraged. Channelization shall be the least favored flood control technique.

Flood Hazards & Community Resilience Policy 2h – Preference of Multi-Purpose Use Projects, Project Accountability, & 50% Reduction in Damages. Multiple purpose use shall be preferred over single purpose use, the proposed project shall achieve the purposes intended, and, at a minimum, project shall provide for a 50 percent reduction of the average annual flood damages.

General condition **Fills Within 100-Year Floodplain** states: Permittees must comply with applicable Federal Emergency Management Agency-approved State or local floodplain management requirements. All activities must comply with the general condition for fills within the 100-year floodplain requiring compliance with applicable FEMA-approved State or local floodplain management requirements. All activities authorized under the MDSPGP-7 that are located within the 100-year nontidal floodplain require State Waterway Construction Permits and activities within 25 feet of or in a nontidal wetland require wetlands permits from the State of Maryland. In addition, all Category B activities require a project-specific evaluation by the State and Corps and coordination with federal and state agencies.

Furthermore, the general condition **Management of Water Flows** states**:** 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. 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Flood Hazards & Community Resilience Policy 3 – Development-Related Runoff Restrictions for the Gwynne Falls and Jones Falls Watersheds. Development may not increase the downstream peak discharge for the 100-year frequency storm event in the following watersheds and all their tributaries: Gwynns Falls in Baltimore City and Baltimore County; and Jones Falls in Baltimore City and Baltimore County. MDE (C2) COMAR 26.17.02.07.

MDSPGP-7 activities may authorize activities that result in impacts to the flood-holding capacity of the 100-year floodplain, including surface water flow velocities. To minimize these potential adverse effects, the general condition **Fills Within 100-Year Floodplain** requires the activity to comply with applicable FEMA-approved state or local floodplain management requirements. The requirements will help to ensure that the activities authorized by the MDSPGP-7 will have no more than minimal adverse effects on flood hazards.

Compliance with general condition **Management of Water Flows** will also reduce flood hazards. This general condition requires the permittee to maintain, to the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters, except under certain circumstances. Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

5.2 Coastal Resources

5.2.1 The Chesapeake and Atlantic Coastal Bays Critical Area

In addition to the policies in this section, the laws approved by NOAA implementing the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program are enforceable policies.

Critical Area Policy 1 – Scope of the Buffer. In the Critical Area, a minimum 100-foot vegetated buffer shall be maintained landward from the mean high water line of tidal waters, the edge of each bank of tributary streams, and the landward edge of tidal wetlands. The buffer shall be expanded in sensitive areas in accordance with standards adopted by the Critical Area Commission. The buffer is not required for agricultural drainage ditches if the adjacent agricultural land has in place a soil conservation and water quality plan. Mitigation or other measures for achieving water quality and habitat protection objectives may be necessary in buffer areas for which the Critical Area Commission has modified the minimum applicable requirements due to the existing pattern of development. CAC (C9) COMAR 27.01.09.01, .01-6, .01-8.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 2 – Buffer Disturbance. Disturbance to a buffer in the Critical Area is only authorized for a shoreline stabilization measure or for a facility or activity that is water-dependent; meets a recognized private right or public need; avoids or, if unavoidable, minimizes the adverse impacts on water quality and fish, wildlife, and plant habitat; is limited to the minimum lot coverage necessary to accommodate the facility or activity; and, insofar as possible, locates nonwater-dependent projects associated with water-dependent facilities or activities outside the buffer. Disturbance to a buffer may only be authorized in conjunction with mitigation performed in accordance with an approved buffer management plan. CAC (C9) COMAR 27.01.03.03; COMAR 27.01.09.01, .01-2, .01-3.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the MDSPGP-7, 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. The proposed permit does also state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 3 – Protection of Bird Nesting Areas. Colonial water bird nesting sites in the Critical Area may not be disturbed during breeding season. CAC (C9) COMAR 27.01.09.04.

General condition **Waterfowl Breeding and Wintering Areas** states**:** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the MDSPGP-7, 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.

Critical Area Policy 4 – Protection of Waterfowl. New facilities in the Critical Area shall not interfere with waterfowl concentration and staging areas. CAC (C9) COMAR 27.01.09.04.

General condition **Waterfowl Breeding and Wintering Areas** states**:** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable.

Activities authorized under the MDSPGP-7 require compliance with all terms and conditions of the MDSPGP-7, 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.

Critical Area Policy 5 – Restrictions on Stream Alterations. Channelization or other physical alterations to streams in the Critical Area shall not affect the movement of fish. CAC (C9) COMAR 27.01.09.05.

The general condition **Aquatic Life Movement** states**:** No activity may substantially 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 not to impede flow in the waterway and/or block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage.

Critical Area Policy 6 – Prohibition of Riprap and Artificial Surfaces. The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams in the Critical Area is prohibited unless water quality and fisheries habitat will be improved. CAC (C9) COMAR 27.01.09.05.

The general condition **Aquatic Life Movement** states**:** No activity may substantially 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 not to impede flow in the waterway and/or block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage.

Critical Area Policy 7 – Prohibition of Dams and Structures. The construction or placement of dams or other structures in the Critical Area that would interfere with or prevent the movement of spawning fish or larval forms in streams is prohibited. CAC (C9) COMAR 27.01.09.05.5. The construction or placement of dams or other structures in the

Critical Area that would interfere with or prevent the movement of spawning fish or larval forms in streams is prohibited. CAC (C9) COMAR 27.01.09.05.

The general condition **Aquatic Life Movement** states**:** No activity may substantially 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 not to impede flow in the waterway and/or block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage.

Critical Area Policy 8 – Restrictions on Stream Crossings and Impacts. Development may not cross or affect a stream in the Critical Area, unless there is no feasible alternative and the design and construction of the development prevents increases in flood frequency and severity that are attributable to development; retains tree canopy and maintains stream water temperature within normal variation; provides a natural substrate for affected streambeds; and minimizes adverse water quality and quantity impacts of stormwater. CAC (C9) COMAR 27.01.02.04.

The general condition **Avoidance and Minimization** states 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.

In addition, the general condition **Water Crossings** states:

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. New crossings of all waters of the United States should be designed and constructed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation and justification is required to deviate from the order of preference.

Critical Area Policy 9 – Time of Year Restrictions for Construction in Streams. The construction, repair, or maintenance activities associated with bridges or other stream crossings or with utilities and roads, which involve disturbance within the buffer or which occur in stream are prohibited between March 1 and May 15. CAC (C9) COMAR 27.01.09.05.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 10 – Avoid & Minimize Construction Impacts in Habitat Areas. Roads, bridges, or utilities may not be constructed in any areas designated to protect habitat, including buffers, in the Critical Area, unless there is no feasible alternative and the road, bridge, or utility is located, designed, constructed, and maintained in a manner that maximizes erosion protection; minimizes negative impacts to wildlife, aquatic life, and their habitats; and maintains hydrologic processes and water quality. CAC (C9) COMAR 27.01.02.03C, .04C, .05C.

The general condition **Avoidance and Minimization** states**:** 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.

The general condition **Water Crossings** states:

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) New crossings of all waters of the United States should be designed and constructed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation and justification are required to deviate from the order of preference.

Critical Area Policy 11 – Intensely Developed Areas. The following policies apply in those areas of the Critical Area that are determined to be areas of intense development.

- To the extent possible, fish, wildlife, and plant habitats should be conserved.
- Development and redevelopment shall improve the quality of runoff from developed areas that enters the Chesapeake or Atlantic Coastal Bays or their tributary streams.
- At the time of development or redevelopment, appropriate actions must be taken to reduce stormwater pollution by 10%. Retrofitting measures are encouraged to address existing water quality and water quantity problems from stormwater.
- Development activities may cross or affect a stream only if there is no feasible alternative, and those activities must be constructed to prevent increases in flood

frequency and severity attributable to development, retain tree canopy, maintain stream water temperatures within normal variation, and provide a natural substrate for affected streambeds.

- Areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, shall be maintained and, if possible, are encouraged to be established.
- Ports and industries which use water for transportation and derive economic benefits from shore access, shall be located near existing port facilities or in areas identified by local jurisdictions for planned future port facility development and use if this use will provide significant economic benefit to the State or local jurisdiction.
- Development shall be clustered to reduce lot coverage and maximize areas of natural vegetation.
- Development shall minimize the destruction of forest and woodland vegetation. CAC (C9) COMAR 27.01.02.03.

The general condition **Avoidance and Minimization** states: 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.

Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas. The following policies apply in those portions of the Critical Area that are not areas of intense development.

- Development shall maintain, and if possible, improve the quality of runoff and ground water entering the Chesapeake and Coastal Bays.
- To the extent practicable, development shall maintain existing levels of natural habitat.
- All development sites shall incorporate a wildlife corridor system that connects undeveloped vegetated tracts onsite with undeveloped vegetated tracts offsite.
- All forests and developed woodlands that are cleared or developed shall be replaced on not less than an equal area basis.
- If there are no forests on a proposed development site, the site shall be planted to provide a forest or developed woodland cover of at least 15 percent.
- Development on slopes equal to or greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain the slope and is consistent with other policies.
- To the extent practicable, development shall be clustered to reduce lot coverage and maximize areas of natural vegetation.

- Lot coverage is limited to 15 percent of the site. CAC (C9) COMAR 27.01.02.04.

The general condition **Avoidance and Minimization** states: 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.

Critical Area Policy 13 – Public Facilities Allowed With Restrictions in Buffer. Public beaches or other public water-oriented recreation or education areas or activities may be permitted in the buffer in portions of the Critical Area not designated as intensely developed areas only if adequate sanitary facilities exist; sanitary and service facilities are, to the extent possible, located outside the buffer; permeable surfaces are used to the extent practicable, if no degradation of ground water would result; and disturbance to natural vegetation is first avoided or, if unavoidable minimized. CAC (C9) COMAR 27.01.03.08.

The general condition **Avoidance and Minimization** states: 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.

Critical Area Policy 14 – Water-Dependent Research Facilities. Research-associated water-dependent facilities or activities may be permitted in the buffer if associated nonwater-dependent projects are located outside the buffer. CAC (C9) COMAR 27.01.03.09.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 15 – Siting Industrial & Port-Related Facilities. Water-dependent industrial and port-related facilities may only be located in the portions of areas of intense development designated as modified buffer areas. CAC (C9) COMAR 27.01.03.05.

The Corps does not have authority to impose or enforce zoning requirements. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 16 – Restrictions on Waste Facilities. Solid or hazardous waste collection or disposal facilities and sanitary landfills are not permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these facilities are needed in order to correct an existing water quality or wastewater management problem. CAC (C9) COMAR 27.01.02.02.

The Corps does not have authority to impose or enforce zoning requirements. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 17 – Buffer Management Plan. If a development or redevelopment activity occurs on a lot or parcel that includes a buffer or if issuance of a permit, variance, or approval would disturb the buffer, the proponents of that activity must develop a buffer management plan that clearly indicates that all applicable planting standards developed by the Critical Area Commission will be met and that appropriate measures are in place for the protection and maintenance of the buffer. CAC (C9) COMAR 27.01.09.01-1, .01-3.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 18 – Protection of Critical Area from Adverse Effects of Surface Mining. When locating a surface mining activity, substantial loss of renewable resource land and degradation of water quality must be avoided or, in the alternative, minimized. When conducting a surface mining activity, all available measures must be utilized to protect the Critical Area from all sources of pollution resulting from that activity, including sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of waste, dust, or spoil. CAC (D5) COMAR 27.01.07.02.

Activity specific conditions where applicable state that excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States. Immediately after completion of construction of the utility project through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

General conditions that apply include:

1**Removal of Temporary Fill, Structures, and Mats:**

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 (12) months after commencing the temporary impacts.

b. 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.
c. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
d. 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.
e. 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.
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.

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Discharge of Pollutants: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Critical Area Policy 19 – Reclamation Requirements for Surface Mining. In the Critical Area, surface mining activities must be conducted in a way that facilitates site reclamation, including renewable resource land, as soon as possible and to the maximum extent possible. CAC (D5) COMAR 27.01.07.02B.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 20 – Areas that are Unsuitable for Surface Mining. Surface mining is prohibited in a habitat protection area, in an area where highly erodible soils exist, and within 100 feet immediately landward from mean high water of tidal waters or from the edge of a bank of a tributary stream. CAC (D5) COMAR 27.01.07.03B.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 21 – Prohibition of Wash Plants in Buffer. Wash plants, including stockpiles, wash ponds, and related washing equipment, may not be located in the 100-foot buffer. CAC (D5) COMAR 27.01.07.01, .03D.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 22 – Requirements for Agriculture in the Buffer. Agriculture is authorized in the buffer if, as a minimum agricultural best management practice, a vegetated filter strip of at least 25 feet measured landward from the mean high water line of tidal waters or tributary streams or from the edge of tidal wetlands, whichever is further inland, is established in trees, shrubs, grass, or mixed vegetation. CAC (C4) COMAR 27.01.09.01-6.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 23 – Geographical Limits for Feeding or Watering Livestock. The feeding or watering of livestock is not permitted within 50 feet of the mean high

water line of tidal waters or tributary streams or from the edge of tidal wetlands, whichever is further inland. CAC (C4) COMAR 27.01.09.01-6.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 24 – Creating New Agricultural Lands. In the Critical Area, the creation of new agricultural lands shall not be accomplished by diking, draining, or filling of a nontidal wetland, without appropriate mitigation; by clearing of forest or developed woodland on soil with a slope greater than 15 percent or on soil with a K factor greater than 0.35 and a slope greater than 5 percent; by clearing that will adversely affect water quality or will destroy plant or wildlife habitat; or by clearing existing natural vegetation within the 100-foot buffer. CAC (C4) COMAR 27.01.06.03C.

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 25 – Best Management Practices for Agriculture. Agricultural operations within the Critical Area shall have in place and be implementing a current soil conservation and water quality plan and nutrient management plan prepared by a certified nutrient management consultant or certified farm operator. CAC (C4) COMAR 27.01.06.03C.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 26 – Cutting or Clearing Trees in the Buffer. Cutting or clearing of trees within the buffer is prohibited except that commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands if the buffer is not subject to additional habitat protection. Commercial harvests must be in compliance with a buffer management plan that is prepared by a registered professional forester and is approved by the Department of Natural Resources. CAC (C5) Md. Code Ann., Nat. Res. § 8-1808.7; COMAR 27.01.09.01-7

The Corps does not have authority to impose or enforce vegetative buffer. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 27 – Requirements for Commercial Tree Harvesting in the Buffer. Commercial tree harvesting in the buffer may not involve the creation of logging roads and skid trails within the buffer and must avoid disturbing stream banks and shorelines as well as include replanting or allowing regeneration of the areas disturbed or cut in a manner that assures the availability of cover and breeding sites for wildlife and reestablishes the wildlife corridor function of the buffer. CAC (C5) Md. Code Ann., Nat. Res. § 8-1808.7; COMAR 27.01.09.01-7

The Corps does not have authority to impose or enforce vegetative buffers. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 28 – General Restrictions to Intense Development. Intense development should be directed outside the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the intensely developed areas. CAC (D1) Md. Code Ann., Natural Res. § 8-1807(b); COMAR 27.01.02.02B.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Critical Area Policy 29 – Development Restrictions in Critical Area. The following development activities and facilities are not permitted in the Critical Area except in intensely developed areas and only after the activity or facility has demonstrated that there will be a net improvement in water quality to the adjacent body of water.

- Non-maritime heavy industry
- Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters
- Permanent sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge when applied by an approved method at approved application rates may be permitted in the Critical Area, but not in the 100-foot Buffer.
- CAC (C9) COMAR 27.01.02.02.

The Corps does not have authority to impose or enforce vegetative buffers or upland areas. The proposed permit does state that applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

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. Any action which alters the natural character in, on, or over tidal wetlands; tidal marshes; and tidal waters of Chesapeake Bay and its tributaries, the coastal bays adjacent to Maryland's coastal barrier islands, and the Atlantic Ocean shall avoid dredging and filling, be water-dependent, and provide appropriate mitigation for any necessary and unavoidable adverse impacts on these areas or the resources associated with these areas. A proponent of an action described above shall explain the actions impact on: habitat for finfish, crustaceans, mollusks, and wildlife of significant economic or ecologic value; potential habitat areas such as historic spawning and nursery grounds for anadromous and semi-anadromous fisheries species and shallow water areas suitable to support populations of submerged aquatic vegetation; marine commerce, recreation, and aesthetic enjoyment; flooding; siltation; natural water flow, water temperature, water quality, and natural tidal circulation; littoral drift; local, regional, and State economic conditions; historic property; storm water runoff; disposal of sanitary waste; sea level rise and other determinable and periodically recurring natural hazards; navigational safety; shore erosion; access to beaches and waters of the State; scenic and wild qualities of a designated State scenic or wild river; and historic waterfowl staging areas and colonial bird-nesting sites. MDE (B2) COMAR 26.24.01.01, COMAR 26.24.02.01, .03; COMAR 26.24.05.01.

Although exact descriptions and locations of discharges cannot be described at this time, it should be noted that the MDSPGP-7 is composed 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. Conditions within the permit are specifically written in order to satisfy that there would be no adverse effects to the environment. Applications will be screened for any potential effects to historic resources and rare threatened or endangered species, if found to have even a potential of an adverse effect to these resources the permit would be elevated for further review and evaluation.

Applicable general conditions for tidal wetlands include but are not limited to:

Management of Water 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Environmental Values: The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

Consultation pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for proposed MDSPGP-7 activities that may adversely affect essential fish habitat. Consultation may occur on a case-by-case or regional programmatic basis. The Corps may impose regional and special conditions to ensure that activities authorized by the MDSPGP-7 will result in only minimal adverse effects on essential fish habitat, including anadromous fish and submerged aquatic vegetation.

Adverse effects to the chemical composition of the aquatic environment will be controlled by **Discharge of Pollutants** that states the material used for construction must be free from toxic pollutants in toxic amounts.

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 Lost. Removal, excavation, grading, dredging, dumping, or discharging of, or filling a non-tidal wetland with materials of any kind, including the driving of piles and placing of obstructions; changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; disturbing the water level or water table; or removing or destroying plant life that would alter the character of a non-tidal wetland is prohibited unless: The proposed project has no practicable alternative; adverse impacts are first avoided and then minimized based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions; comprehensive watershed management plans are considered; and the proposed project does not cause or contribute to an individual or cumulative effect that degrades aquatic ecosystem diversity, productivity, and stability, plankton, fish, shellfish, and wildlife, recreational and economic values, and public welfare, surface water quality, or ground water quality. Mitigation measures are required to replace the ecological values associated with non-tidal wetlands that are impaired by activities described above. MDE (C3) COMAR 26.23.01.01; COMAR 26.23.02.04, .06; COMAR 26.23.04.02.

The Maryland Department of the Environment Permit program administered by MDE includes protection of wetlands --both tidal and non-tidal. MDE is a state permit which governs wetlands, surface water, and surface water withdrawals/impoundments. It also serves as § 401 certification of the federal *Clean Water Act* § 404 permits for dredge and fill activities in waters of the U.S.

The proposed modified MDSPGP-7 is designed to continue to authorize certain activities formerly covered by the NWP program. The modified MDSPGP-7 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. The State of Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a State-wide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require Maryland Department of the Environment (MDE) to apply evaluation criteria consisting of alternatives analyses (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation for wetland impacts. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act.

The general condition **Environmental Values** states**:** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

The general condition **Aquatic Life Movements** states**:** No activity may substantially 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 impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage.

As part of the programmatic MDSPGP-7 issuance process, the Corps' decision-making process involves consideration of the benefits and detriments that may result from the activities authorized by the MDSPGP-7, including recreational and economic values and public welfare. In general, activities authorized by the MDSPGP-7 are likely to have a positive impact on the local economy. During construction, these activities may generate jobs and revenue for local contractors as well as revenue for building supply companies that sell construction materials. Certain projects may also change land values, by providing access or opening up new land areas for development.

5.2.4 Forest

Forest Policy 1 – Projects Impacting More Than 40,000 Square Feet Must Generally Identify & Protect Habitat & Mitigate for Impacts. The Forest Conservation Act and its implementing regulations, as approved by NOAA, are enforceable policies. Generally, before developing an area greater than 40,000 square feet, forested and environmentally sensitive areas must be identified and preserved whenever possible. If these areas cannot be preserved, reforestation or other mitigation is required to replace the values associated with them. This policy does not apply in the Critical Area. DNR (C5) Md. Code Ann., Nat. Res. §§ 5-1601 to -1613; COMAR 08.19.01-.06.

The proposed reissuance of the MDSPGP-7 is a federal general permit for categories of activities over a five year period; therefore, at this time it is not possible to provide the plans, locations, and descriptions in advance of the actual applications. The activities within the MDSPGP-6 have been in place for over four years. It is expected that the activities proposed under the reissuance of the MDSPGP would be similar in nature taking in to account the proposed revisions to the activities. The proposed revisions are meant to increase the efficiency of the Programmatic permit and streamline review and approval of inherently beneficial activities while continuing to assure the authorized activities are minimal in nature both individually and cumulatively. As with the existing MDSPGP-6, plans and descriptions for activities proposed to be authorized under the reissuance of the MDSPGP-7 will be included in a Joint Permit Application (JPA). The JPA will be provided to the Maryland Department of the Environment (MDE) for review and approval for any required state authorizations.

General conditions that are applicable include:

Environmental Values: The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

Mitigation Standards in the MDSPGP-7 are as follows:

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.

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 3/100 acre (1,307 square 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. Minimum stream mitigation requirements shall be determined using the current Corps endorsed methodology (i.e., Maryland Stream Mitigation Framework).

Where both wetlands and streams or other open waters exist on the project site, the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) will be determined based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the Corps may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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.

All compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.

The applicant is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse effects on the aquatic environment. For MDSPGP activities, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits. However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the application is submitted to the Corps, the Corps may approve the use of permittee-responsible mitigation. Applicants may propose the use of mitigation banks, in-lieu-fee programs, or separate permittee-responsible mitigation. When developing a compensatory

mitigation proposal, the applicant must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b).

Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

If the proposed activity will result in the loss of greater than 5,000 square feet of wetland or 3/100-acre (1,307 square feet) of stream bed, and a Category B review is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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-7 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, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the MDSPGP-7 authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).The special conditions of the MDSPGP-7 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.

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-7 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.

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.

Compensatory mitigation will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-7. 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-7.

Forest Policy 2 – Maintain Resource Sustainability & Prevent or Limit Clear-Cutting to Protect Watersheds. Forestry activities shall provide for adequate restocking, after cutting, of trees of desirable species and condition; provide for reserving, for growth and subsequent cutting, a sufficient growing stock of thrifty trees of desirable species to keep the land reasonably productive; and prevent clear-cutting, or limit the size of a tract to be clear-cut in areas where clear-cutting will seriously interfere with protection of a watershed. DNR (C5) Md. Code Ann., Nat. Res. § 5-606.

Not applicable, the Corps does not have regulatory authority over the cutting of vegetation.

Forest Policy 3 – Commercial Timber Cuts of Five Acres or More with Pines Comprising 25% of Live Trees Shall Ensure Pine Resource Sustainability. When any timber is cut for commercial purposes from five acres or more of land on which loblolly pine, shortleaf pine, or pond pine, singly or together occur and constitute 25 percent or more of the live trees on each acre, the person conducting the cutting or the landowner shall leave uncut and uninjured at least eight well distributed, cone-bearing, healthy windfirm, loblolly, shortleaf, or pond pine trees on each acre cut for the purpose of reseeding. DNR (C5) Md. Code Ann., Nat. Res. §§ 5-501, -504.

Not applicable, the Corps does not have regulatory authority over the cutting of vegetation.

Forest Policy 4 – Minimize Forest Removal for Highway Construction Projects & Mitigate with Equivalent Reforestation if over 1 Acre Is Lost. Any highway construction activity, including related off-site environmental mitigation, may only cut or clear the minimum amount of trees and other woody plants necessary to be consistent with sound design principles. If over an acre of forest is lost as a result of the project, an equivalent area of publicly owned property shall be reforested. DNR/MDOT (C5) Md. Code Ann., Nat. Res. § 5-103.

Not applicable, the Corps does not have regulatory authority over the cutting of vegetation.

Forest Policy 5 – Protection of Roadside Trees Unless Removal or Trimming Is Justified. Roadside trees should not be cut down, trimmed, mutilated, or injured unless

the activity will eliminate a hazard to property, public safety, or health; improve or prevent tree deterioration; or improve the general aesthetic appearance of the right-of-way. DNR (C5) COMAR 08.07.02.05.

Not applicable, the Corps does not have regulatory authority over the cutting of vegetation.

Forest Policy 6 – Sediment & Erosion Control in Non-Tidal Wetlands. A person conducting a forestry activity in non-tidal wetlands shall develop and implement a sediment and erosion control plan. MDE (C3) COMAR 26.23.05.02.

The general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

5.2.5 Historic and Archaeological Sites

Historical and Archaeological Policy 1 – Protection of Submerged Historic Resources. Unless permission is granted by the Maryland Historical Trust, activities that excavate, remove, destroy, injure, deface, or disturb submerged archaeological historic property are generally prohibited. MDP (C8) Md. Code Ann., State Fin. & Proc. §§ 5A-341, -333.

The general condition **Historic Properties** states: Any activity authorized by the MDSPGP-7 shall comply with Section 106 of the National Historic Preservation Act. 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. 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-7.

Historical and Archaeological Policy 2 – Protection of Caves & Archaeological Sites. Unless permission is granted by the Maryland Historical Trust, activities that excavate, remove, destroy, injure, deface, or disturb cave features or archeological sites under State control are generally prohibited. MDP (C8) Md. Code Ann., State Fin. & Proc. §§ 5A-342 to -343.

See **Historic Properties** general condition that ensures MHT review.

Historical and Archaeological Policy 3 – Protection of Burial Sites & Cemeteries. Neither human remains nor funerary objects may be removed from a burial site or cemetery, unless permission is granted by the local State's Attorney. Funerary objects may not be willfully destroyed, damaged, or defaced. MDP (C8) Md. Code Ann., Crim. Law §§ 10-401 to -404.

See **Historic properties** general condition that ensures MHT review.

5.2.6 Living Aquatic Resources

Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered Fish or Wildlife. Unless authorized by an Incidental Take Permit, no one may take a State listed endangered or threatened species of fish or wildlife. DNR (A4) Md. Code Ann., Nat. Res. §§ 4-2A-01 to -09; Md. Code Ann., Nat. Res. §§ 10-2A-01 to -09.

The MDSPGP-7 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.

Living Aquatic Resources Policy 2 – Sustainable Harvesting of Fisheries. Fisheries shall be sustainably harvested. DNR (A4) Md. Code Ann., Nat. Res. § 4-215.

Not applicable, the Corps does not have regulatory authority for fisheries harvesting procedures.

Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries & Management Resources. Any land or water resource acquired by the State to protect, propagate, or manage fish shall not be damaged. DNR (A4) Md. Code Ann., Nat. Res. § 4-410.

Not applicable, the Corps does not have regulatory authority for fisheries harvesting procedures.

Living Aquatic Resources Policy 4 – Fish Passage. No activity will be permitted that impedes or prevents the free passage of any finfish, migratory or resident, up or down stream. DNR (A4) Md. Code Ann., Nat. Res. § 4-501 to -502.

NMFS has determined that many of the MDSPGP-7 Category A activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. National Marine Fisheries Service, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category A of the MDSPGP-7 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category B review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-7 process, an alternate Corps permit review process is required for the project.

The general condition for **Aquatic Life Movements** states**:** 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.

The General condition for **Depressing Pipes and Culverts** states: Culverted crossings of intermittent and perennial waterbodies must meet the following conditions:

a. Countersinking Culverts: Permanent culvert 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 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 on bedrock or above existing buried utility lines/pipes: If a permittee determines that countersinking a culvert 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. Category A activities where no application is required
d. Extensions of existing 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 culvert is not practicable in accordance with the requirements above (except those culverts placed in streams on bedrock or over buried utility lines/pipes or existing 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 Conservation Division, for recommendations about the measures to be taken to allow for migratory fish passage.

Living Aquatic Resources Policy 5 – Time-of-Year Restrictions for Construction in Non-Tidal Waters. All in-stream construction in non-tidal waters is prohibited from October through April, inclusive, for natural trout waters and from March through May, inclusive, for recreational trout waters. In addition, the construction of proposed projects, which may adversely affect anadromous fish spawning areas, shall be prohibited in non-tidal waters from March 15 through June 15, inclusive. MDE (C2) COMAR 26.17.04.11B(5).

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Living Aquatic Resources Policy 6 – Protection of Forest Buffers Along Trout Streams. Riparian forest buffers adjacent to waters that are suitable for the growth and propagation of self-sustaining trout populations shall be retained whenever possible. MDE (C5) COMAR 26.08.02.03-3F.

As a general permit, it is impossible to predict where future projects will be constructed. The Corps does not possess the authority to enforce forest buffers, however, the general condition of **Avoidance and Minimization** states**:** 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.

Furthermore, the Corps may impose special conditions on any project authorized under the MDSPGP-7, 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.

Living Aquatic Resources Policy 7 – Non-Tidal Habitat Protection & Mitigation. Projects in or adjacent to non-tidal waters shall not adversely affect aquatic or terrestrial

habitat unless there is no reasonable alternative and mitigation is provided. MDE (C2) COMAR 26.17.04.11B(5).

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV). The harvest, cutting, or other removal or eradication of submerged aquatic vegetation may only occur in a strip up to 60 feet wide surrounding a pier, dock, ramp, utility crossing, or boat slip to point of ingress in a marina, otherwise the activity must receive the approval of the Department of Natural Resources. No chemical may be used for this purpose, and the timing and method of the activity shall minimize the adverse impact on water quality and on the growth and proliferation of fish and aquatic grasses. MDE (A4) Md. Code Ann., Nat. Res. § 4-213.

No Category A activity can impact SAV beds. The delineation of Submerged Aquatic Vegetation (SAV) boundaries shall be accomplished by utilizing composite mapping of the five (5) most recent years of verified SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys located at https://www.vims.edu/research/units/programs/sav/access/maps/index.php or locations of SAV otherwise identified from approved ground-truthed SAV surveys conducted during the growing season). If SAV beds are within the project facility the project will be elevated to a category B status for further review by the Corps.

Living Aquatic Resources Policy 9 – Protection of Natural Oyster Bars. Natural oyster bars in the Chesapeake Bay shall not be destroyed, damaged, or injured. DNR (A4) Md. Code Ann., Nat. Res. § 4-1118.1.

General condition **Spawning areas** states: 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-7.

Living Aquatic Resources Policy 10 – Protection of Oyster Aquaculture Leases. A person, other than the leaseholder, may not willfully and without authority catch oysters on any aquaculture or submerged land lease area, or willfully destroy or transfer oysters on this land in any manner. DNR (A4) Md. Code Ann., Nat. Res. § 4-11A-16(a).

The activity for **Private Landowner Oyster Gardening** allows for cages placed on the bottom substrate and floats placed at the water's surface or within the water column by riparian landowners for purposes of growing oysters for personal use or to assist in restoration efforts, subject to the activity-specific impact limits and requirements, and the general conditions of this general permit (Section 10; limited to tidal waters of the United States). An activity specific condition is that the riparian owner shall not commercially harvest, sell, or market any of the shellfish for human consumption.

Living Aquatic Resources Policy 11 – Genetically Modified Organisms (GMOs) Are Prohibited in State Waters. An organism into which genetic material from another organism has been experimentally transferred so that the host acquires the genetic traits of the transferred genes may not be introduced into State waters. DNR (A4) COMAR 08.02.19.03.

Not applicable, the Corps does not have regulatory jurisdiction over this activity.

Living Aquatic Resources Policy 12 – Control of Nonnative Aquatic Organisms. Vectors for the introduction of nonnative aquatic organisms must be appropriately controlled to prevent adverse impacts on aquatic ecosystems. DNR (A4) Md. Code Ann., Nat. Res. § 4-205.1.

The MDSPGP-7 may authorize activities that can impact living aquatic resources and habitat to many species of fish and wildlife. Two MDSPGP-7 general conditions require case-by-case review of all activities that may adversely affect Federally-listed endangered or threatened species.

Consultation pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for the proposed MDSPGP-7 activities that may adversely affect essential fish habitat, including submerged aquatic vegetation. Consultation may occur on a case-by-case or programmatic basis. Regional or special conditions may be added to ensure that activities authorized by the MDSPGP-7 will result in only minimal adverse effects on essential fish habitat.

An activity specific condition for **Private Landowner Oyster Gardening** states: The riparian owner shall maintain accurate records on the amount of shellfish placed in structures or floats and record the disposition of the shellfish. Reports shall be submitted annually and include name and address of riparian owner, location of floats, amount of shellfish raised, and final use

(resource enhancement, restoration, or consumption by the riparian owner or others), including the location shellfish were moved to for enhancement or restoration activities. Reports shall be submitted to the State Aquaculture Coordinator by December 31 annually.

Living Aquatic Resources Policy 13 – Control of Snakehead Fish. Except as authorized by federal law, any live snakehead fish or viable eggs of snakehead fish of the Family Channidae may not be imported, transported, or introduced into the State. DNR (A4) COMAR 08.02.19.06.

Not applicable, the MDSPGP-7 does not authorize introduction of wildlife.

Living Aquatic Resources Policy 14 – Nonnative Oysters Prohibited in State Waters. Nonnative oysters may not be introduced into State waters. DNR (A4) Md. Code Ann., Nat. Res. § 4-1008.

An activity specific condition for **Private Landowner Oyster Gardening** states: The riparian owner shall maintain accurate records on the amount of shellfish placed in structures or floats and record the disposition of the shellfish. Reports shall be submitted annually and include name and address of riparian owner, location of floats, amount of shellfish raised, and final use (resource enhancement, restoration, or consumption by the riparian owner or others), including the location shellfish were moved to for enhancement or restoration activities. Reports shall be submitted to the State Aquaculture Coordinator by December 31 annually. Another condition of the activity states: The native eastern oyster (Crassostrea virginica) shall be the species used in the oyster aquaculture activity in the floats.

5.3 Coastal Uses

5.3.1 Mineral Extraction

Mineral Extraction Policy 1 – Identification & Protection of Habitats Prior to Prospecting. Habitats of unique value for fish, wildlife, and other related environmental values shall be identified prior to commencing coal prospecting activities and shall be protected during those activities. MDE (D5) COMAR 26.20.08.04.

It is possible for coal prospecting activities qualify under the MDSPGP-7, but only if the activity falls within the impact thresholds set by the MDSPGP-7. In addition, the general condition of **Avoidance and Minimization** states**:** 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. In addition, the general condition of **Spawning Areas** states: 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-7. Also, the general condition of Environmental Values states: The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

Mineral Extraction Policy 2 – Surface Mining Must Be Conducted in an Environmentally Responsible Manner. Surface mining activities must be conducted in a manner that protects birds and wildlife; decreases soil erosion; prevents pollution of rivers, streams, and lakes; prevents loss or waste of valuable mineral resources; and prevents and eliminates hazards to health. MDE (D5) Md. Code Ann., Envir. §§ 15-802, -807(d), -822(c), -828(b).

General conditions apply to all activities, the general condition of **Waterfowl Breeding and Wintering Areas** states**:** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 3 – Surface Mining Must Not Have Adverse Effects on Habitats, Resources, Properties and the Public. Surface mining activities must not have an unduly adverse effect on wildlife or freshwater, estuarine, or marine fisheries; constitute a substantial physical hazard to a neighboring house, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of application for the permit; or significantly adversely affect the uses of a publicly owned park, forest, or recreation area in existence at the time of application for the permit. MDE (D5) Md. Code Ann., Envir. §§ 15-802(a), -810(b).

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 4 – Surface Mining Shall Use Best Available Technology to Minimize Impacts and Protect & Enhance Resources. Surface coal mining activities shall use the best available technology to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, and shall achieve enhancement of the resources when practicable. MDE (D5) COMAR 26.20.23.02A.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 5 – Surface Mining Shall Protect Rare, Threatened or Endangered Species. A surface coal mining activity may not be conducted in a way that is likely to jeopardize the continued existence of endangered or threatened species listed by the federal or state government. MDE (D5) COMAR 26.20.23.02B.

The MDSPGP-7 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.

Mineral Extraction Policy 6 – Mining Operations Shall Minimize and Control Water Pollution. Coal mining operations shall be conducted to minimize water pollution, and, where necessary, treatment methods shall be used to control water pollution. MDE (D5) COMAR 26.20.13.05B; COMAR 26.20.21.01.

The general condition of **Discharge of Pollutants** states: All activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Mineral Extraction Policy 7 – Mining Operations May Not Adversely Affect Public, Historic or Natural Resources Without State Approval. Coal mining may not adversely affect any publicly owned park or place recorded in the National Register of Historic Sites without approval from the appropriate agency and is prohibited in the Youghiogheny River scenic corridor; within 100 feet of a cemetery, a perennial or intermittent stream, or the outside right-of-way line of any public road; and in areas designated unsuitable for certain types of surface coal mining. MDE (D5) Md. Code Ann., Envir. §§15-505(b), -506(e); COMAR 26.20.20.03.

The general condition of **Historic Properties** states: Any activity authorized by the MDSPGP-7 shall comply with Section 106 of the National Historic Preservation Act. 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. 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-7.

Mineral Extraction Policy 8 – Protection of Surface Waters and Aquifers From Underground Mining. Underground coal mining activities may not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more. Underground coal mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. MDE (D5) COMAR 26.20.13.10.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 9 – Surface Mining Set Backs from Adjacent Properties and Natural Resources. Surface mining shall not occur within 25 feet of any property line or 100 feet of any scenic or wild river or its tributaries or any parcel of land that has been designated an area of critical State concern. MDE (D5) COMAR 26.21.01.17.

No activity is authorized under the MDSPGP-7 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.

Mineral Extraction Policy 10 – Size & Impact Limits for Prospect Pits & Their Reclamation. Coal prospect pits may not be more than 1 acre in size or affect more than 10 acres and shall be backfilled, seeded, and mulched within 30 days after it is opened. MDE (D5) COMAR 26.20.08.04.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 11 – Preparation & Contents of Mining & Reclamation Plans. Coal project proponents must draft a mining and reclamation plan, including a description of the natural resources, geology, and cultural and historical resources

within the proposed permit and adjacent areas and the methods for road construction, removing topsoil, controlling drainage, backfilling, and revegetating the affected area, as well as identify baseline hydrologic information and determine the probable hydrologic consequences of the mining and reclamation operations upon surface and ground waters on and off the permit area and plan remedial and reclamation activities. MDE (D5) Md. Code Ann., Envir. §§ 15-505(c), -822; COMAR 26.20.02.05-.09; COMAR 26.20.02.14.

The proposed reissuance of the MDSPGP-7 is a federal general permit for categories of activities over a five year period; therefore, at this time it is not possible to provide the plans, locations, and descriptions in advance of the actual applications. The activities within the MDSPGP-6 have been in place for over four years. It is expected that the activities proposed under the reissuance of the MDSPGP would be similar in nature taking in to account the proposed revisions to the activities. The proposed revisions are meant to increase the efficiency of the Programmatic permit and streamline review and approval of inherently beneficial activities while continuing to assure the authorized activities are minimal in nature both individually and cumulatively. As with the existing MDSPGP-6, plans and descriptions for activities proposed to be authorized under the reissuance of the MDSPGP-7 will be included in a Joint Permit Application (JPA). The JPA will be provided to the Maryland Department of the Environment (MDE) for review and approval for any required state authorizations.

Mineral Extraction Policy 12 – Inclusion of Mining Methods, Reclamation Practices, Land Uses & Protective Measures in Mining and Reclamation Plans. A mining and reclamation plan for a mineral extraction activity must outline mining methods, intended reclamation practices, land uses before and after mining, areas to be affected by the mining, and measures to protect other uses and the environment. MDE (D5) Md. Code Ann., Envir. §§ 15-807(d), -808(d), -822, -828(b).

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 13 – County Zoning Approval. Prior to the commencement of a mineral extraction activity, the appropriate county must issue a written statement that the proposed land use conforms to all applicable county zoning and land use requirements. MDE (D5) Md. Code Ann., Envir. § 15-810(c).

Not applicable, the Corps does not have the regulatory authority to enforce zoning requirements. Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations.

Mineral Extraction Policy 14 – Water Supply Contingency Planning. If the probable hydrologic consequences of the proposed coal mining operation are contamination, diminution, or interruption of an underground or surface source of water that is used for domestic, agricultural, industrial, or other legitimate purpose, the project proponent shall analyze the availability of water and alternative water sources. MDE (D5) COMAR 26.20.02.08.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 15 – Prevention of Subsidence. Underground coal mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the extent technologically and economically feasible. MDE (D5) COMAR 26.20.13.07A.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 16 – Use of Best Available Technology to Control Sediment & Erosion. Sediment control measures shall be designed, constructed, and maintained using the best technology currently available to prevent additional contributions of sediment to stream flow or runoff outside an area where coal mining is permitted. MDE (D5) COMAR 26.20.21.05A.

The general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Mineral Extraction Policy 17 – Diversions Shall Minimize Adverse Impacts & Use Best Available Technology. Diversions shall be designed, constructed, and maintained to minimize adverse impacts, including preventing the contribution of suspended solids to stream flow and runoff outside an area where coal mining permitted, to the extent possible using the best technology currently available. MDE (D5) COMAR 26.20.21.03.

The general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Mineral Extraction Policy 18 – Mine Excavations or Disturbances Shall Prevent Adverse Impacts. Pits, cuts, and other mine excavations or disturbances for coal mining shall be located, designed, constructed, and utilized in such a manner as to prevent adverse impacts, including the discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems. MDE (D5) COMAR 26.20.20.01B.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 19 – Mining-Related Transportation Facilities Shall Prevent Adverse Impacts to the Environment. Transportation facilities constructed for surface coal mining purposes shall be located, designed, constructed or reconstructed, and maintained, and the area restored, in a manner that prevents damage to fish, wildlife, or their habitat and related environmental values; prevents additional contributions of suspended solids to stream flow or runoff outside the permit area; minimizes diminution or degradation of water quality and quantity; minimizes erosion, siltation, and attendant air pollution; and prevents damage to public and private property. MDE (D8) COMAR 26.20.19.01D, .08.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 20 – Minimize Pre-Mining Surface Impacts & Control Erosion & Sediments. The removal of vegetation, topsoil, and overburden before surface mining must be minimized, and erosion and sediment control devices must be constructed and maintained. MDE (D5) COMAR 26.21.01.10.

The general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Mineral Extraction Policy 21 – Surface Mining Areas Shall Be Managed to Control Erosion and Erosion-Related Air Pollution. An area exposed for surface coal mining shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion. MDE (D5) COMAR 26.20.23.01A.

In areas where the Corps can assert their jurisdiction, the general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Mineral Extraction Policy 22 – Topsoil Removed During Surface Mining Shall Be Conserved and Protected Onsite for Reclamation. During surface mining, topsoil shall be removed, segregated, and stockpiled on-site for reclamation and protected by a vegetative cover or by other methods demonstrated to provide protection. MDE (D5) COMAR 26.21.01.11.

In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 23 – Minimize Hydrologic Impacts and Erosion from Mining Areas. The discharge of water from coal mining areas shall be conducted so as

to reduce erosion, prevent deepening or enlargement of stream channels, and minimize disturbance of the hydrologic balance. MDE (D5) COMAR 26.20.21.07.

In areas where the Corps can assert their jurisdiction, the general condition of **Erosion and Sediment Control** states**:** 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, shall be used to reduce erosion and retain sediment on-site during and after construction. 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 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 should be performed during periods of low-flow or no-flow, whenever practicable.

Mineral Extraction Policy 24 – Mine Drainage & Discharge to Surface Waters Shall Be Treated Onsite. All surface drainage from coal mining and discharge of water from underground coal mining to surface waters shall be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area. MDE (D5) COMAR 26.20.13.06.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 25 – Overburden & Mine Waste From Surface Mining Must Be Stabilized Using Approved Methods. Storage piles of overburden, mine waste, and rock from surface mining must be stabilized and may not restrict any natural drainage without an approved diversion. MDE (D5) COMAR 26.21.01.12.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 26 – Stream Protection & Erosion Control During Prospecting. An ephemeral, intermittent, or perennial stream may not be diverted during coal prospecting activities. Overland flow of water shall be diverted only in a manner that prevents erosion and, to the extent possible using best available technology, additional contributions of suspended solids to streamflow or runoff outside the prospecting area. MDE (D5) COMAR 26.20.08.04.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Management of Water Flows** states**:** 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. 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Mineral Extraction Policy 27 – Protection of Water Flow, Quality & Quantity During Mining. During any coal mining activities, changes in the depth to ground water, in water quality and quantity, and in the location of surface water drainage channels shall be minimized. MDE (D5) COMAR 26.20.21.01.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Mineral Extraction Policy 28 – Compensation of Water Users Impacted By Mining. The operator of a coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately

resulting from the mining operations. MDE (D5) Md. Code Ann., Envir. §§ 15-524(b), -608(b); COMAR 26.20.13.05D; COMAR 26.20.20.11.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Management of Water Flows** states**:** 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. 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Mineral Extraction Policy 29 – Compensation for Water Supply or Property Damage in Karst Terrain. If water is pumped out of a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington counties, the project proponent shall replace a water supply if it fails as a result of declining ground-water levels and pay compensation for property damage from land subsidence. MDE (D5) Md. Code Ann., Envir. § 15-813.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Management of Water Flows** states**:** 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. 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Mineral Extraction Policy 30 – Mining & Reclamation Shall Maintain Pre-Mining Recharge & Hydrology. Surface coal mining activities and restoration efforts shall be

conducted so as to maintain the recharge capacity of surface mining areas and support the approved post mining land use, minimizes disturbances to the hydrologic balance in the mine plan area and in adjacent areas, and provides a rate of recharge that approximates the pre-mining recharge rate. MDE (D5) COMAR 26.0.20.02; COMAR 26.20.21.01A.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition **Management of Water Flows** states: 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. 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. 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). Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Mineral Extraction Policy 31 – Prompt Reclamation After Completion of Prospecting. Promptly after coal prospecting activities are completed, all areas disturbed during prospecting operations, including roads, shall be returned to the approximate original contour. MDE (D5) COMAR 26.20.08.04.

General condition **Removal of Temporary Fill, Structures, and Mats** states:

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 (12) months after commencing the temporary impacts.
b. 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.
c. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
d. 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.
e. 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.

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.

Mineral Extraction Policy 32 – Mine Reclamation Must Restore Resources and Landscape to Support Future Land Use. Mined land must be properly reclaimed, including rehabilitating settling ponds; restoring or establishing stream channels and stream banks to a condition that minimizes erosion, siltation, and other pollution; and creating final slopes in all excavations at an angle that minimizes the possibility of slides and is consistent with the future use of the land. MDE (D5) Md. Code Ann., Envir.§§ 15-802(a), -807(d), -822, -828(b).

Activity specific conditions where applicable state that excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States. Immediately after completion of construction of the project through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

General conditions that apply include:

Removal of Temporary Fill, Structures, and Mats:

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 (12) months after commencing the temporary impacts.
b. 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.
c. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
d. 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.
e. 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.
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.

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Mineral Extraction Policy 33 – Mine Reclamation Must Minimize Contamination, Adverse Impacts to Ground Water & Support Post-Mining Land Uses. The placement of backfilled materials shall be done in a way that minimizes contamination and other adverse effects of coal mining on ground water systems outside the permit area and supports approved post-mining land uses. MDE (D5) COMAR 26.20.20.01A.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition **Removal of Temporary Fill, Structures, and Mats** states:

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 (12) months after commencing the temporary impacts.
b. 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.
c. Temporary fills and structures shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland.
d. 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.
e. 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.

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.

Mineral Extraction Policy 34 – Mine Reclamation Vegetative Cover Shall Support Post-Mining Land Use. Vegetative cover shall be established on all areas disturbed by surface coal mining in a manner that is compatible with the approved post-mining land use. MDE (D5) COMAR 26.20.29.01A.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition **Avoidance and Minimization** states**:** 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. The definition for **Temporary Impacts** states: For the purpose of MDSPGP-7, temporary impacts include, but are not limited to, waters of the United States that are filled, flooded, excavated, or drained for a limited period of time, and restored to pre-construction contours and elevations after construction. The affected areas must be revegetated as appropriate. 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-7.

Mineral Extraction Policy 35 – Mine Reclamation Shall Adhere to Mining & Reclamation Plan & Be Completed Within 2 Years of Mining Termination. Surface mining reclamation shall be completed in accordance with the mining and reclamation plan within 2 years after mineral extraction has terminated. MDE (D5) COMAR 26.21.01.16.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.2 Electric Generation and Transmission

Electrical Generation and Transmission Policy 1 – Power Plants Shall Be Sited, Constructed & Operated to Protect Natural Resources and the Public. Power plants shall be sited, constructed, and operated in a manner which minimizes their impacts on tidal wetlands, aquatic resources, terrestrial resources, significant wildlife habitat, public open space, recreational, and natural areas, air and water quality, and

the public health, safety, and welfare. DNR/PSC (D2) Md. Code Ann., Nat. Res. §§ 1-302, 3-303, 3-304, 3-306; Md. Code Ann., Pub. Util. Cos. § 7-208.

Activities authorized by a MDSPGP-7 may require other federal, state or local authorizations. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Transmission Lines, and Qualified Generator Lead Lines Must Include Comprehensive Environmental Assessments, Recommend Mitigation Opportunities & Engage Local Government. Proposals for new power plants, overhead transmission lines, and qualified generator lead lines must account for their impact on the physical, biological, aesthetic, and cultural features of the site and adjacent areas; identify contributions to air and water pollution; recommend mitigation opportunities; and adequately consider recommendations of local government as well as the effects of climate change on the proposed infrastructure. Proposals for new power plants also must duly consider the consistency of the application with the comprehensive plan and zoning of each county or municipality in which it is proposed to be located, the impact of the power plant on the quantity of annual and long-term statewide greenhouse gas emissions, and the consistency of the application with Maryland's climate commitments for reducing statewide greenhouse gas emissions. PSC (D2) Md. Code Ann., Pub. Util. Cos. §7-207(e); COMAR 20.79.03.02(B); COMAR 20.79.04.04.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Electrical Generation and Transmission Policy 3 – Proposals for New Transmission Lines Must Estimate Costs to Support Alternative Route Analysis. Proposals for new transmission lines must estimate the capital and annual operating costs of each alternative route considered and explain why each alternative route was rejected. PSC (D2) COMAR 20.79.04.03.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Electrical Generation and Transmission Policy 4 – Maintain Safe Vertical Clearance of Power Lines Over Water. Utilities shall maintain the vertical clearances of overhead electric supply lines that cross water surfaces suitable for sailing. PSC (D2) COMAR 20.50.02.05(B).

The general condition of **For Aerial Transmission Lines Across Navigable Waters** outlines overhead clearances required for bridges and transmission lines.

Electrical Generation and Transmission Policy 5 – Minimize Adverse Impacts from Cooling Water Intake Structures. The location, design, construction, and capacity of cooling water intake structures shall reflect the best technology available for minimizing adverse environmental impact, specifically impingement and entrainment losses. MDE (D4) COMAR 26.08.03.05.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

5.3.3 Tidal Shore Erosion Control

Tidal Shore Erosion Control Policy 1 – Use Materials to Match Function & Minimize Impacts. Structural erosion control measures that employ a jetty, groin, breakwater, or other offshore structure shall be designed to use materials that are of adequate size, weight, and strength to function as intended; free of protruding objects,

debris, and contaminants; and selected to minimize impacts to water quality and plant, fish, and wildlife habitat. MDE (C1) COMAR 26.24.04.01-4.

The general condition of **Discharge of Pollutants** states that all activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Tidal Shore Erosion Control Policy 2 – Prohibition of Unsuitable Materials for Backfilling. Tidal shore erosion control projects shall not use backfill containing litter, refuse, junk, metal, tree stumps, logs, or other unsuitable materials. MDE (C1) COMAR 26.24.04.01-4.

The general condition of **Discharge of Pollutants** states that all activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Tidal Shore Erosion Control Policy 3 – Requirements for Beach Nourishment Projects. Beach nourishment projects shall meet the following requirements: The fill material grain size shall be equal to or greater in grain size and character to the existing beach material, or determined otherwise to be compatible with existing site conditions and acceptable to the Department; The fill material shall be relatively free of organic material, floating debris, or other objects; Silt and clay fills that change the sandy nature of the existing beach materials are not acceptable; Gravel fill may be acceptable, if particle sizes are equal to or greater than the existing beach materials; and Fill material shall be placed above the mean high water line before final grading to achieve the desired beach profile, unless site conditions prohibit the placement of fill material above the mean high water line and specific measures are designed to prevent material from washing away from the site. MDE (C1) COMAR 26.24.03.06D.

An activity specific conditions of **Living Shorelines/Beach Nourishment** activity states: Grain size analyses for both the dredged material and placement site are required. The dredged material must be equal to or larger in grain size and character than the existing beach material, or

determined otherwise to be compatible with existing site conditions acceptable to the Corps. The dredged material may not contain more than 10 percent silts and clays, or control measures such as breakwaters, groins or similar structures should be used to control movement.

- Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.
- The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline.
- This activity authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.
- If an erosion and sediment control plan is required for clearing or grading of the existing bank, it must be obtained from the applicable erosion and sediment control agency before beginning the clearing or grading.
- The fill and channelward toe of containment structures must not extend more than 50 feet channelward of MHW.

Tidal Shore Erosion Control Policy 4 – Nonstructural Shoreline Stabilization That Preserves The Natural Environment Is Required Unless Conditions Warrant Structural Stabilization. Improvements to protect property bounding on navigable water against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except in areas designated by Department of the Environment as appropriate for structural shoreline stabilization measures, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures. MDE (C1) Md. Code Ann., Envir. § 16-201.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states: 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.

The **Living Shorelines/Beach Nourishment** activity states: Discharges of fill material and associated shoreline protection structures, including but not limited to, groins, wave screens, low profile stone sills, oyster reef sills, small geo-tubes, and coir logs, in subtidal and intertidal waters and tidal wetland along tidal shorelines for the construction and maintenance of living

shorelines and/or beach nourishment for the purpose of shoreline erosion control only. A living shoreline has a footprint that is made up mostly of native material. Living shorelines incorporate vegetation or other living, natural "soft" elements along or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection or stability. Living shorelines should maintain the natural continuity of the land-water interface and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal fringe wetlands or oyster or mussel reef structures. Structures used to protect living shorelines should follow an order of preference that utilizes a small impact footprint. Further, documentation of on-going shoreline erosion at the project site is required to be submitted as part of the project application.

Tidal Shore Erosion Control 5 – Limited Encroachment into State Tidal Waters. Encroachment into State or private tidal wetlands for shore erosion control is limited to that which is structurally necessary and is verified by a design report. Bulkheads that encroach into tidal wetlands are prohibited unless the encroachment is three feet or less beyond the mean high water line and other nonstructural and structural shoreline stabilization measures have been considered and determined to be infeasible. MDE (C1) COMAR 26.24.04.01-4.

An application for Bulkhead repair or replacement, including stone toe protection and New Bulkheads, including Stone Toe Protection require a permit from both MDE and the Corps. The activity of **New Bulkheads, Including Stone Toe Protection** only authorizes new bulkheads and replacement of currently non-serviceable bulkheads up to three feet channelward of the mean high water shoreline. authorizes new bulkheads and replacement of currently non-serviceable bulkheads up to three feet channelward of the mean high water shoreline.

Tidal Shore Erosion Control Policy 6 – List of Shore Erosion Control Measures from Most to Least Consistent with State Policy. Tidal shore erosion control measures are listed below beginning with measures that are most consistent with State policy and ending with measures that are least consistent with State policy.

- No action and relocation of structures threatened by erosion
- Nonstructural shoreline stabilization that is dominated by tidal wetland vegetation, including a living shoreline
- Beach nourishment
- Breakwater
- Groin, jetty, or a similar structure
- Revetment
- Bulkhead

MDE (C1) COMAR 26.24.01.02; COMAR 26.24.04.01; COMAR 26.24.04.01-3. .

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local

licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Tidal Shore Erosion Control Policy 7 – Conditions Prohibiting Shore Erosion Control Projects. Tidal shore erosion control projects shall not occur when:

- There is no evidence of erosion;
- Existing State or private tidal wetlands are effectively preventing erosion;
- Adjacent properties may be adversely affected by the proposed project;
- Navigation may be adversely affected by the project and the applicant has not adequately offset these impacts;
- Threatened or endangered species, species in need of conservation, or significant historic or archaeological resources may be adversely affected by the project; or
- Natural oyster bars or private oyster leases may be adversely affected by the project.

MDE (C1) COMAR 26.24.04.01.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.
An activity condition of **Living Shorelines/Beach Nourishment** requires unaltered shorelines must be experiencing documented on-going erosion to qualify for Category A review under the MDSPGP-7. Projects that do not meet this requirement require review under Category B or alternate Corps permit review procedures, as appropriate.

5.3.4 Oil and Natural Gas Facilities

Oil and Natural Gas Facilities Policy 1 – CFRA and Its Regulations Are An Overarching Policy for Oil and Gas Facilities. The Coastal Facilities Review Act (CFRA) and its implementing regulations, as approved by NOAA, serve as an overarching enforceable policy for oil and natural gas facilities.

Acknowledged. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Oil and Natural Gas Facilities Policy 2 – Detection & Control of Oil Spills. To detect and control oil spills, releases, and discharges, all private tank vessels transporting oil in the State must either be equipped with a cargo level monitoring system, have double hulls, have a plan for inspecting load lines approved by the Department of the Environment, or be accompanied by an all-weather escort vessel for the purpose of continuously checking for evidence of an oil discharge from the escorted tank vessel. MDE (A2) Md. Code Ann., Envir. § 4-405 (b)(1); COMAR 26.10.01.22B.

Not applicable, the Corps does not have authority over, or include specific vessel traffic restrictions.

Oil and Natural Gas Facilities Policy 3 – Financial Capacity to Cover Potential Oil Spill Cleanup and Recovery. Through bond or other form of security, the owner and operator of a private tank vessel transporting more than 25 barrels of oil as cargo must be able to prove the financial ability to cover the cost of oil spill cleanup and recovery before entering waters of the State. MDE (A2) COMAR 26.10.01.23B-C.

Not applicable, the Corps does not have authority over, or include specific vessel traffic restrictions.

Oil and Natural Gas Facilities Policy 4 – No Spills, Releases, or Discharges of Oil in Areas That May Enter State Waters. No person may pump, spill, release, discharge, throw, drain, deposit, or cause to be deposited oil, other matter containing oil, bilge or ballast water, or water from any receptacle containing oil in a manner by which oil may escape into, near, or in an area likely to pollute waters of the State. MDE (A2) Md. Code Ann., Envir. § 4-410(a); COMAR 26.10.01.04D(2)

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

The general condition of **Discharge of Pollutants** states that all activities that are authorized under the MDSPGP-7 and that involve any discharge or relocation of pollutants 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 in association with this authorization may consist of unsuitable material such as trash, tires, debris, concrete with rebar, car bodies, asphalt, or any other material determines to be inappropriate by the Corps.

Oil and Natural Gas Facilities Policy 5 – Aboveground Storage Sites Shall Prevent Oil from Polluting State Waters. Aboveground oil storage sites shall prevent movement of oil into the waters of the State. MDE (D1)COMAR 26.10.01.04D, 26.10.17.07D, 26.10.18.03E.

Not applicable. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Oil and Natural Gas Facilities 6 – Oil Shall Not Be Stored within Tidal Waters or Within 100-Year Floodplain Unless Permitted. The installation, construction, or extension of a storage tank, storage tank system, oil storage facility, oil handling facility, or regulated substance storage facility within a special flood hazard area, a tidal or nontidal wetland, a nontidal wetland buffer, or a 100-year floodplain of free-flowing waters is prohibited without first obtaining a wetlands permit or providing an equivalent level of environmental protection. MDE (D1) COMAR 26.10.01.04E, 26.10.17.03E, 26.10.18.03E.

The purpose of the MDSPGP-7 is to issue a Maryland and State Permit for certain activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland. MDSPGP-7 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. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.5 Dredging and Disposal of Dredge Material

Dredging and Disposal of Dredged Material Policy 1 – Dredging for Non-Water Dependent Projects is Discouraged. A person may not dredge for projects that are non-water-dependent unless there is no practicable alternative. MDE (A3) Md. Code Ann., Envir. § 5-907(a); COMAR 26.24.03.02D.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Dredging and Disposal of Dredged Material Policy 2 – Dredging Requires An Environmental Analysis and Is Generally Discouraged. Dredging for sand, gravel, or fill material, including material for beach nourishment, is prohibited unless an environmental analysis determines that there will be no adverse impact on the environment and no alternative material is available. MDE (A3) COMAR 26.24.03.02C.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Dredging and Disposal of Dredged Material Policy 3 – Dredging Shall Allow Flushing & Make Maximum Use of Existing Channels. Dredging of channels, canals, and boat basins shall be designed to provide adequate flushing and elimination of stagnant water pockets, and channel alignment shall make maximum use of natural or existing channels and bottom contours. MDE (B2) COMAR 26.24. 03.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

For new and maintenance dredging projects to be authorized under the MDSPGP-7, applicants would have to show that they are not dredging deeper than adjacent contours. They would also be required to maintain sloped edges that allow for unobstructed ebb and flow of the tide.

Dredging and Disposal of Dredged Material Policy 4 – Dredging Shall First Avoid & Then Minimize Habitat Impacts. The alignment of a channel shall first avoid and then minimize impacts to shellfish beds, submerged aquatic vegetation, and vegetated tidal wetlands. When feasible, the alignment shall be located the maximum distance feasible from shellfish beds, submerged aquatic vegetation, and other vegetated tidal wetlands. MDE (C6) COMAR 26.24.03.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

For new and maintenance dredging projects to be authorized under the MDSPGP-7, applicants would have to show that they avoid and minimize impacts to shellfish beds, SAV and vegetated wetlands.

Dredging and Disposal of Dredged Material Policy 5 – Dredging Time-of-Year Restrictions. Dredging is prohibited from February 15 through June 15 in areas where yellow perch have been documented to spawn and from March 1 through June 15 in areas where other important finfish species have been documented to spawn. MDE (A3) COMAR 26.24.02.06G.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Category A new and maintenance dredging projects are conditioned to prohibit dredging from April 1 through June 30 within all tidal waters to protect summer flounder nursery activities. Category A new dredging prohibits dredging in anadromous fish spawning areas.
MDE reviews all New and Maintenance dredging applications that qualify for authorization under the MDSPGP-7. They would have the discretion to add conditions into their that cover the yellow perch spawning season.

Dredging and Disposal of Dredged Material Policy 6 – 500 –Yard Setback Restriction for Dredging Near Submerged Aquatic Vegetation (SAV). Dredging is prohibited within 500 yards of submerged aquatic vegetation from April 15 through October 15. MDE (A3) COMAR 26.24.02.06H.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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. MDE reviews all New and Maintenance dredging applications that qualify for authorization under the MDSPGP-7. They would have the discretion to add conditions into their that protects Submerged aquatic vegetation.

Dredging and Disposal of Dredged Material Policy 7 – Restrictions on Mechanical & Hydraulic Dredging Near Shellfish Areas. Within 500 yards of shellfish areas, mechanical and hydraulic dredging is prohibited from June 1 through September 30 and mechanical dredging is also prohibited from December 16 through March 14. MDE (A3) COMAR 26.24.02.06E.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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. They would have the discretion to add conditions into their that cover the proximity to shellfish areas. MDE reviews all New and Maintenance dredging applications that qualify for authorization under the

MDSPGP-7. They would have the discretion to add conditions into their license/permit that protects shellfish.

Dredging and Disposal of Dredged Material Policy 8 – Dredge Disposal Site Selection Criteria. New disposal sites for dredged material shall be selected based on the following hierarchy of criteria: (i) beneficial use and innovative reuse of dredged material; (ii) upland sites and other environmentally sound confined capacity; (iii) expansion of existing dredged material disposal capacity other than the Hart-Miller Island Dredged Material Containment Facility and areas collectively known as Pooles Island. MDE (A3) Md. Code Ann., Envir. § 5-1104.2(d).

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

The MDSPGP-7 is the first version to allow for the beneficial use of dredge material. The **Beneficial Reuse of Dredge Materials** states: Applicant must identify the intent to use dredged material for fill activities within WOTUS at the proposed project site. Applicants must provide the exact location and quantities of dredge material placement within WOTUS. Material testing is required prior to placement and must comply with the Evaluation of Dredged Material Proposed for Discharge in waters of the U.S.-Testing Manual: Inland Testing Manual (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 WOTUS. Any temporary storage of dredge material must be placed in uplands in accordance with federal, state, and local regulations.

Dredging and Disposal of Dredged Material Policy 9 – Dredge Material Disposal Facilities Shall Minimize Impacts. Disposal facilities for dredged material shall be designed to have the least impact on public safety, adjacent properties, and the environment. MDE (A3) COMAR 26.24.03.04A.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Dredging and Disposal of Dredged Material Policy 10 – Sediment & Erosion Control Plan Shall Be Developed & Approved Prior to Upland Dredge Disposal. Prior to disposing of dredged material on upland areas, a sediment and erosion control plan must be developed and approved by the local soil conservation district or the Department of the Environment and the methods for protecting water quality and quantity must be identified in detail. MDE (A3) COMAR 26.24.03.03B.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Dredging and Disposal of Dredged Material Policy 11 – Restrictions on Open Water Disposal of Dredge Material in Chesapeake Bay & Its Tributaries. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portion of any of the Chesapeake Bay's tributaries except when the project is undertaken to restore islands or underwater grasses, stabilize eroding shorelines, or create or restore wetlands or fish and shellfish habitats. MDE (A3) Md. Code Ann., Envir. § 5-1101(a), 5-1102.

The MDSPGP-7 may not be used to deposit dredged material in an unconfined manner. Activities under shoreline and stream bank stabilization activities may allow for beneficial dredge material use; however, activity specific restrictions include:

- Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.
- The tidal groin must be constructed with vents/windows or as a low-profile structure so as to minimize impacts to the littoral drift.
- Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.

Activities such as Applicable General Conditions that apply to all actions are as follows:

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Beneficial Reuse of Dredge Material: Applicant must identify the intent to use dredged material for fill activities within WOTUS at the proposed project site. Applicants must provide the exact location and quantities of dredge material placement within WOTUS. Material testing is required prior to placement and must comply with the Evaluation of Dredged Material Proposed for Discharge in waters of the U.S.-Testing Manual: Inland Testing Manual (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 WOTUS. Any temporary storage of dredge material must be placed in uplands in accordance with federal, state, and local regulations.

Dredging and Disposal of Dredged Material Policy 12 – No Open Water Disposal of Dredge Material in Deep Trough of Chesapeake Bay. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the bottomlands or waters of the Chesapeake Bay known as the deep trough. MDE (A3) Md. Code Ann., Envir. §§ 5-1101(a), -1102.

The MDSPGP-7 may not be used for disposal activities within the deep trough.

Dredging and Disposal of Dredged Material Policy 13 – Restrictions on Open Water Disposal of Dredge Material from Baltimore Harbor. No material dredged from Baltimore Harbor shall be disposed of in an unconfined manner in the open water portion of Chesapeake Bay, or the tidal portions of its tributaries outside of Baltimore Harbor. MDE (A3) Md. Code Ann., Envir. § 5-1102(a).

The MDSPGP-7 may not be used to deposit dredged material in an unconfined manner. Activities under shoreline and stream bank stabilization activities may allow for beneficial dredge material use; however, activity specific restrictions include:

- Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.
- The tidal groin must be constructed with vents/windows or as a low-profile structure so as to minimize impacts to the littoral drift.
- Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.

Activities such as Applicable General Conditions that apply to all actions are as follows:

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, shall be used to reduce erosion and retain sediment on-site during and after construction. Excavated materials from activities should 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 should 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.

Beneficial Reuse of Dredge Material: Applicant must identify the intent to use dredged material for fill activities within WOTUS at the proposed project site. Applicants must provide the exact location and quantities of dredge material placement within WOTUS. Material testing is required prior to placement and must comply with the Evaluation of Dredged Material Proposed for Discharge in waters of the U.S.-Testing Manual: Inland Testing Manual (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 WOTUS. Any temporary storage of dredge material

must be placed in uplands in accordance with federal, state, and local regulations.

5.3.6 Navigation

Navigation Policy 1 – Piers Are Preferred to Dredging in Providing Access to Deep Waters. Navigational access projects shall when possible be designed to use piers to reach deep waters rather than dredging. MDE (B2) COMAR 26.24.03.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Navigation Policy 2 – Central Access Channels with Short Spurs Are Preferred to Multiple Separate Channels. Navigational access channels to serve individual or small groups of riparian landowners shall be designed to prevent unnecessary channels. A central access channel with short spur channels shall be considered over separate access channels for each landowner. MDE (B2) COMAR 26.24.03.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Navigation Policy 3 – Channels Shall Minimize Impacts to Tidal Wetlands & Underwater Topography. Navigational access channels shall be designed to minimize alteration of tidal wetlands and underwater topography. MDE (B2) COMAR 26.24.03.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and**

Minimization states**:** 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.

Navigation Policy 4 – New & Expanded Marinas, with a Preference Given to Expansion of Existing Facilities, Shall Be Located in Strongly Flushed Waters More Than 4.5 Feet Deep at Mean Low Tide & Not Adversely Impact Habitat. New or expanded facilities for the mooring, docking, or storing of more than ten vessels on tidal navigable waters shall be located on waters with strong flushing characteristics and may not be located in areas where the natural depth is 4.5 feet or less at mean low water, and any of the following will be adversely affected: aquatic vegetation, productive macroinvertebrate communities, shellfish beds, fish spawning or nursery areas, rare, threatened, or endangered species, species in need of conservation, or historic waterfowl staging areas. Expansion of existing facilities is favored over new development. MDE (A1) COMAR 26.24.04.03.

The MDSPGP-7 may not be used to add more than 2 vessels to an existing marina facility, or to moor more than 10 vessels for a private or commercial pier.

Navigation Policy 5 – Restrictions on Placement of Mooring Buoys. The location of buoys for the mooring of boats shall not be located in designated private or public shellfish areas, cable-crossing areas, navigational channels, in other places in where general navigation would be impeded or obstructed, or public ship anchorage. The location of mooring buoys should not obstruct the riparian access of adjacent property owners or hinder the orderly access to or use of the waterways by the general public. DNR (A1) COMAR 08.04.13.02.

The MDSPGP-7 requires that the mooring buoy(s) and vessels attached thereto must not be placed in a marked navigation channel, or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of a Federal navigation channel, or block ingress to or egress from adjacent properties. An alternate Corps permit review procedure is required for moorings proposed to be located within Federal navigation channel horizontal setback limits. Mooring buoys are not authorized within Federal channel limits.

Navigation Policy 6 – Noise Limit for Vessels on State Waters. Vessels operated on state waters should not exceed a noise level of 90dB(a). DNR (A1) COMAR 08.18.03.03.

The MDSPGP-7 does not regulate noise levels of vessels operating on state waters. Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a

permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.7 Transportation

Transportation Policy 1 – Sustainability Analysis of Transportation Projects. The social, economic, and environmental effects of proposed transportation facilities projects must be identified and alternative courses of action must be considered. MDOT (D8) COMAR 11.01.06.02B.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Transportation Policy 2 – Public Engagement in Transportation Project Planning. The public must be involved throughout the process of planning transportation projects. MDOT (D8) Md. Code Ann., Transp. § 7-304(a); COMAR 11.01.06.02B.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Transportation Policy 3 – Projects Must Support Multi-Modal Transportation. Transportation development and improvement projects must support the integrated nature of the transportation system, including removing impediments to the free movement of individuals from one mode of transportation to another. MDOT (D8) Md. Code Ann., Transp. § 2-602.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Transportation Policy 4 – An Integrated Private-Public Regional Transportation System. Private transit facilities must be operated in such a manner as to supplement facilities owned or controlled by the State to provide a unified and coordinated regional transit system without unnecessary duplication or competing service. MDOT (D8) Md. Code Ann., Transp. § 7-102.1(b).

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Transportation Policy 5 – Transportation Projects Must Consider the Needs of Bicyclists & Pedestrians. Access to and use of transportation facilities by pedestrians and bicycle riders must be enhanced by any transportation development or improvement project, and best engineering practices regarding the needs of bicycle riders and pedestrians shall be employed in all phases of transportation planning. MDOT (D8) Md. Code Ann., Transp. § 2-602.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.8 Agriculture

Agriculture Policy 1 – Soil Conservation & Sediment Control to Protect Water Quality. Agricultural land management practices may not add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State unless a plan is being implemented on the property that is designed to conserve soil and protect water quality. MDA (C4) Md. Code Ann., Envir. § 4-213.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Agriculture Policy 2 – Use of Best Management Practices to Protect Non-Tidal Wetlands. A person conducting an agricultural activity shall implement best management practices to protect non-tidal wetlands. MDE (C3) COMAR 26.23.05.02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Agriculture Policy 3 – Use of Best Management Practices at Animal Feeding Operations. Animal feeding operations shall use best management practices designed and approved by a local soil conservation district to limit livestock access to surface water. MDA (C4) COMAR 26.08.03.09.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Agriculture Policy 4 – Nutrient Management Shall Minimize Water Quality Impacts. An agricultural operation with $2500 a year in gross income or more than 8000 pounds of

livestock that uses chemical fertilizers, sludge, or animal manure shall use these nutrients in a way that minimizes impacts on water quality. MDA (C4) Md. Code Ann., Agric. § 8-803.1.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Agriculture Policy 5 – Agricultural Drainage Projects Shall Provide Substantial Agricultural Benefits, Minimize Environmental Impacts, & Be Consistent with Soil Conservation Plans. Agricultural drainage projects shall provide substantial agricultural benefits, prevent direct over bank flow into the ditch, be truncated as far upstream as possible, minimize adverse environmental impacts, and implement and maintain approved soil conservation district conservation plans. MDE (C3) COMAR 26.17.04.11.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.9 Development

Development Policy 1 – Sediment & Erosion Control. Any development shall be designed to minimize erosion and keep sediment onsite. MDE (C4) COMAR 26.17.01.08.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Development Policy 2 – Erosion and Sediment Control Plan. An erosion and sediment control plan is required for any grading activity that disturbs 5,000 square feet of land area and 100 cubic yards of earth or more, except for agricultural land management practices and agricultural best management practices. MDE (C9) COMAR 26.17.01.05.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 3 – Stormwater Management. Development or redevelopment of land for residential, commercial, industrial, or institutional use shall include stormwater management compliant with the Environmental Site Design sizing criteria, recharge volume, water quality volume, and channel protection storage volume criteria. MDE (C9) COMAR 26.17.02.01, -.06

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 4 – First Avoid then Minimize Wetland Impacts, Minimize Water Quality, Habitat & Forest Damage & Preserve Cultural Resources. Development must avoid and then minimize the alteration or impairment of tidal and non-tidal wetlands; minimize damage to water quality and natural habitats; minimize the cutting or clearing of trees and other woody plants; and preserve sites and structures of historical, archeological, and architectural significance and their appurtenances and environmental settings. MDE/DNR/CAC (D6) Md. Code Ann., Envir. §§ 4-402, 5-907(a), 16-102(b); Md. Code Ann., Nat. Res. §§ 5-1607(a), 8-1801(a); Md. Code Ann., Land Use § 8-102; COMAR 26.24.01.01(A).

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7. In areas where the Corps can assert their jurisdiction, the general condition of **Avoidance and Minimization** states**:** 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.

Development Policy 5 – Proposed Development Projects Must Be Sited Where Adequate Water Supply, Sewerage and Solid Waste Services & Infrastructure Are Available. Any proposed development may only be located where the water supply system, sewerage system, or solid waste acceptance facility is adequate to serve the proposed construction, taking into account all existing and approved developments in the service area and any water supply system, sewerage system, or solid waste acceptance facility described in the application and will not overload any present facility for conveying, pumping, storing, or treating water, sewage, or solid waste. MDE (C9) Md. Code Ann., Envir. § 9-512.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 6 – Proposed Construction Must Have Water and Wastewater Allocation or Provide Onsite Capacity. A proposed construction project must have an allocation of water and wastewater from the county whose facilities would be affected or, in the alternative, prove access to an acceptable well and on-site sewage disposal system. The water supply system, sewerage system, and solid waste acceptance facility on which the building or development would rely must be capable of handling the needs of the proposed project in addition to those of existing and approved developments. MDE (D6) Md. Code Ann., Envir. § 9-512.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 7 – Structures Served by On-Site Water and Sewage Waste Disposal Systems Must Demonstrate Capacity Prior to Construction or Alteration. Any residence, commercial establishment, or other structure that is served or will be served by an on-site sewage disposal system or private water system must demonstrate that the system or systems are capable of treating and disposing the existing sewage flows and meeting the water demand and any reasonably foreseeable increase in sewage flows or water demand prior to construction or alteration of the residence, commercial establishment, or other structure. MDE (D6) COMAR 26.04.02.03F.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 8 – Grading or Building in the Severn River Watershed Requires Approved Development Plan. Proponents of grading or building in the Severn River Watershed must create a development plan and have it approved by the soil conservation district. The plan shall include a strategy for controlling silt and erosion and must demonstrate that any septic or private sewer facility will not contribute to the pollution of the Severn River. MDE (D4) Md. Code Ann., Envir. § 4-308(a).

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 9 – Siting Requirements for Industrial Facilities. Industrial facilities must be sited and planned to ensure compatibility with other legitimate beneficial water uses, constraints imposed due to standards of air, noise and water quality, and provision or availability of adequate water supply and wastewater treatment facilities. MDE (D4) Md. Code Ann., Envir. §§ 2-102, 4-402, 9-224(b), 9-512(b); COMAR 26.02.03.02; COMAR 26.11.02.02B.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 10 – Citizen Engagement in Planning & Development. Local citizens shall be active partners in planning and implementation of development. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 11 – Protect Existing Community Character & Concentrate Growth. Development shall protect existing community character and be concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 12 – Site Development Near Available or Planned Transit. Development shall be located near available or planned transit options. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5 -7A-01 to -02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 13 – Design for Walkable, Mixed Use Communities. Whenever possible, communities shall be designed to be compact, contain a mixture of land uses, and be walkable. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

Development Policy 14 – Communities Must Identify Adequate Water Supply, Stormwater & Wastewater Services & Infrastructure to Meet Existing & Future Development. To meet the needs of existing and future development, communities (geographically defined areas with shared interests, values, resources, and goals) must identify adequate drinking water and water resources and suitable receiving waters and land areas for stormwater management and wastewater treatment and disposal. MDE (D6) Md. Code Ann., Land Use § 3-106.

Projects would have to comply with all terms and condition of the MDSPGP-7 in order to qualify for a permit. Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-7.

5.3.10 Sewage Treatment

Sewage Treatment Policy 1 – Protection of State Waters for Designated Uses. The quality of state waters shall be protected, maintained, and improved for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses. MDE (D7) Md. Code Ann., Envir. §§ 4-402, 9-302(b), 9-323(a).

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 2 – Waste Must Be Treated Prior To Discharge to Protect Designated Uses. No waste shall be discharged into any waters of the State without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of the State's waters. MDE (D7) Md. Code Ann., Envir. §§ 9-302(b), -323(a).

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 3 – Wastes May Not Be Disposed of in a Manner that Likely Creates a Nuisance or Causes Ground or Water Contamination. Sewage or sewage effluent, treated or non-treated, or industrial wastes may not be disposed of in any manner that is likely to create a nuisance or cause contamination of a potable water supply system, the waters of the State, or the ground surface. MDE (D7) COMAR 26.04.02.02.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 4 – Waste May Not Be Discharged Into the Patuxent & Severn Rivers & Their Tributaries. A person may not discharge raw sewage or any other waste into the Patuxent River, the Severn River, or any of their tributaries. MDE (D7) Md. Code Ann., Envir. § 4-307.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 5 – Sewage Sludge May Not Be Discharged Into the Chesapeake Bay, or the Bay's Tidewater Tributaries Within 5 Miles of Hart-Miller-Pleasure Island Chain. A person may not dump, deposit, scatter, or release sewage sludge by any means, including discharge from a sewer or pipe, into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portions of any of the Chesapeake Bay's tributaries within 5 miles of the Hart-Miller-Pleasure Island chain in Baltimore County. MDE (D7) Md. Code Ann., Envir. § 5-1102(e).

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 6 – A Discharge Permit is Required Prior to Constructing, Altering or Operating a Sewage Treatment Facility. Before constructing, installing, modifying, extending, altering, or operating a sewage treatment facility that could cause or increase the discharge of pollutants into the waters of the State, the proponent must hold a discharge permit issued by the Department of the Environment or provide an equivalent level of water quality protection. MDE (D7) Md. Code Ann., Envir. § 9-323(a).

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 7 – Water Quality Protection from On-Site Sewage Disposal Systems. Before attempting to construct or alter an on-site sewage disposal system or cause it to receive any increase in flow or change in the character of wastewater, the proponent must provide an equivalent level of water quality protection to that of a permit from the Department of the Environment. MDE (D7) COMAR 26.04.02.03.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 8 – New Sewage Treatment Plants Shall Meet State Effluent Water Quality Standards. New sewage treatment plants shall be constructed so as to meet the State effluent water quality standards, including those for bacteriological values, dissolved oxygen, pH, and temperature conditions, which may require advanced waste treatment. MDE (D7) Md. Code Ann., Envir. § 4-303.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 9 – At Least Secondary Treatment Is Required for Sewage Treatment Discharge Into Any State Waters. Secondary treatment is required as a minimum for sewage treatment works discharging into any waters of the State. MDE (D7) COMAR 26.08.04.04C.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 10 – If Secondary Treatment Cannot Achieve Water Quality or Nutrient Control Requirements, Sewage Treatment Facilities Are Subject to Additional Restrictions. If compliance with the established water quality standards or nutrient control requirements cannot be achieved through secondary treatment for all sewage discharges within a specific river segment or water region, the sewage treatment facilities are subject to additional restrictions. MDE (D7) COMAR 26.08.01.02C.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 11 – Advanced Waste Treatment is Required for Facilities Exceeding 1 Million Gallons Per Day Discharging into Water Quality Limited Waters & May Be Needed on Smaller Systems. Advanced waste treatment is required for all sewage treatment works with a design capacity exceeding 1 million gallons per day and discharging into water quality limited waters. Advanced waste treatment may also be required for smaller sewage treatment works where the Department of the Environment determines that this level of treatment is necessary. MDE (D7) COMAR 26.08.04.04C.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 12 – Phosphorus Discharge Limits for Sewage Treatment Plants. An effluent limitation of 2 milligrams/liter total phosphorus is required for all facilities discharging more than: 500,000 gallons per day to the Chesapeake Bay and its tributaries above the Baltimore Harbor and 10 million gallons per day in the vicinity of Baltimore Harbor to the Bay Bridge. MDE (D7) COMAR 26.08.04.04C.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 13 – Protection of Shellfish Harvest Areas. If discharging into shellfish harvesting waters, sewage treatment must be sufficient to protect shellfish harvesting, potentially requiring advanced waste treatment, and the treatment plant must have a bypass control system, including a minimum 24-hour emergency holding facility. MDE (D7) COMAR 26.08.04.04C.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 14 – Requirements for Holding Tanks. Holding tanks shall be watertight and sized to hold at least 7 days of effluent. MDE (D7) COMAR 26.04.02.02L.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 15 – Sewage System Compliance with County Plans. Sewerage systems must conform to the county plan or revision or amendment of the county plan. MDE (D7) Md. Code Ann., Envir. § 9-511.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 16 – Safe Treatment or Disposal of Sewage Sludge. A sewage sludge utilizer that is engaged in treatment, composting, distribution, application on agricultural or marginal land, or marketing of sewage sludge shall ensure the sewage sludge meets applicable pathogen requirements for Class A or B sewage sludge. MDE (D7) COMAR 26.04.06.02, .12, .17, .32, .38, .42, .52.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 17 – Sewage Sludge Utilization Must Ensure Protection of Public & the Environment. Sewage sludge utilization is prohibited if it cannot be done without causing an undue risk to the environment or public health, safety, or welfare or if the sewage sludge was generated in a state that does not apply sewage sludge to land. MDE (D7) Md. Code Ann., Envir. § 9-245; COMAR 26.04.06.01,.11, .74.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 18 – Sewage Sludge Utilization Permit. Prior to utilizing sewage sludge in Maryland, a person shall obtain a sewage sludge utilization permit from the Maryland Department of the Environment or provide an equivalent level of environmental protection. MDE (D7) Md. Code Ann., Envir. § 9-231.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 19 – A Sewage Sludge User May Not Interfere with State or Local Inspections at a Utilization Site. A sewage sludge utilizer may not interfere with any inspection of a sewage sludge utilization site, including prohibiting access to any representative of the Department of the Environment, to a local health official, or to the

local health official, or to the local health official's designee who requests access to perform any activities to determine compliance with the applicable permit, authorization, approvals, and regulations. MDE (D7) Md. Code Ann., Envir.§ 9-243; COMAR 26.04.06.04.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 20 – Sewage Sludge Composting or Storage Facilities Must Meet Local Zoning Requirements. Sewage sludge composting or storage facilities must meet all zoning and land use requirements of the county in which the facility is to be located. MDE (D7) Md. Code Ann., Envir. § 9-233.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 21 – Public Engagement in Siting of a Sewage Sludge Storage or Distribution Facility. The public shall be given an opportunity to present its views prior to any final decision being made on the siting of sewage sludge or a sewage sludge storage or distribution facility. MDE (D7) Md. Conde Ann. Envir. §§ 9-234, -234.1, -238(c); COMAR 26.04.06.14.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 22 – Limits on the Use of On-Site Sewage Disposal Systems. On-site sewage disposal systems are prohibited:

- If they may pollute well water supplies, water supply reservoirs, shellfish growing waters, bathing beaches, lakes, or tidewater areas, including within 25 feet of drainage ways, flood plain soils, gullies, rock outcroppings, or slopes in excess of 25 percent;
- 50 feet from water well systems in confined aquifers;
- 100 feet from springs, water well systems in unconfined aquifers, water bodies not serving as potable water supplies, sinkholes underlain by karst topography, and a stream bank that is further than 3,000 feet upstream of an intake for a potable water supply; and

200 feet from a stream bank that is closer than 3,000 feet upstream of such an intake. MDE (D7) COMAR 26.04.02.03; COMAR 26.04.02.04.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 23 – Facilities capable of berthing vessels 22 feet or larger with more than 10 slips must have a wastewater collection and treatment system and an on-site pump-out station adequate to handle existing and increased flow and increased sewage capacity, respectively. MDE (D7) Md. Code Ann., Env. § 9-333.

This activity is not regulated by the MDSPGP-7.

Sewage Treatment Policy 24 – A vessel 65 feet in length and under with an installed toilet shall have a Type I, II, or III marine sanitation device. A vessel over 65 feet in length with an installed toilet shall have a Type II or III marine sanitation device. While in Maryland waters, all means of overboard discharge from a vessel with a Type III marine sanitation device must be blocked or secured so as to prevent discharge.

Marine Sanitation Devices:

- A Type I marine sanitation device produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.
- A Type II marine sanitation device produces an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.
- A Type III marine sanitation device does not discharge effluent. DNR/MDE (A1) Md. Code Ann., Natural Res. § 8-741.

This activity is not regulated by the MDSPGP-7.

The Baltimore District finds that the MDSPGP-7 with our Regional Conditions are consistent to the maximum extent practicable with the enforceable policies of the Maryland Coastal Zone Management Program.

The review period begins April 11, 2025, we are providing this document to specifically address the enforceable policies of the Maryland Coastal Zone Management program. As provided by applicable regulations, your final position on CZMA consistency for the MDSPGP-7 must be submitted within 180 days. If you do not reach a final position on CZMA consistency within 180days, we will presume that you concur with our CZMA consistency determination. The State's response should be sent to:

Baltimore District, Regulatory Branch
c/o Alexis Kolarz and Zachary Fry
2 Hopkins Plaza
Baltimore, Maryland 21201
Alexis.L.Kolarz@usace.army.mil
Zachary.T.Fry@usace.army.mil

U.S. Army Corps of Engineers

DRAFT
MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-7
(MDSPGP-7)

Maryland State Programmatic General Permit-7

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DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT STATE OF MARYLAND

The Baltimore District of the United States Army Corps of Engineers (Corps) hereby issues the Maryland State Programmatic General Permit-7 (MDSPGP-7) authorizing certain activities in waters of the United States including jurisdictional wetlands within the Baltimore District's regulatory authority within the State of Maryland. Jurisdictional waters in Maryland that are considered within the area of responsibility of the Philadelphia District are not within the scope of MDSPGP-7 and can be defined as follows: 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 (https://www.nab.usace.army.mil/Portals/63/Chesapeake%20Delaware%20Canal%20NAP.pdf).

I. AUTHORITIES:

A. Federal Permit Authorities, Roles, and Responsibilities:

Federal Permit Authorities:

1. Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code [U.S.C.] 401 and 403).

2. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

3. Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408) (Section 408). (Note that Section 408 is not a permit authority; however, Section 408 permissions are coordinated during the Section 404 and/or Section 10 permit review process).

Roles and Responsibilities:

1. Pursuant to Section 404e of the CWA and Section 10 of the Rivers and Harbors Act, the Corps has the authority to issue general permits, which can operate in conjunction with a state regulatory program that protects the aquatic environment in a manner equivalent to the Department of the Army (DA) regulatory program, provided that the activities authorized under the general permit are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

2. Upon the recommendation of the Chief of Engineers, and under the provisions of

Section 404 of the CWA, as amended (33 U.S.C. 1344), 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 jurisdictional wetlands and navigable waters. These discharges and structures must comply with all terms and conditions identified in the MDSPGP-7.

B. State Authorities:

1. Nontidal Wetlands Protection Act, Annotated Code of Maryland, Environment Article, Section 5-901, et Seq;

2. Appropriation or Use of Waters, Reservoirs, and Dams, Annotated Code of Maryland, Environment Article, Section 5-501 et Seq;

3. Wetlands and Riparian Rights, Annotated Code of Maryland, Environment Article, Section 16- 101;

4. Water Pollution Control, Annotated Code of Maryland, Environment Article, Sections 9-313 through 9-323; and

5. All other applicable regulations.

C. Related Laws:

33 CFR 320.3 includes a list of related laws including, but not limited to, Section 408 of the Rivers and Harbors Act of 1899, Section 401 of the Clean Water Act, Section 402 of the Clean Water Act, Section 307(c) of the Coastal Zone Management Act of 1972, Section 106 of the National Historic Preservation Act of 1966, Section 7 of the Endangered Species Act, the Fish and Wildlife Coordination Act of 1956, the Magnuson-Stevens Fishery Conservation and Management Act, Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972 (a.k.a. Ocean Dumping Act), Section 7(a) of the Wild and Scenic Rivers Act, the Bald and Golden Eagle Protection Act, and the Migratory Bird Treaty Act of 1918.

II. SCOPE OF ACTIVITIES:

A. Activities Authorized by the MDSPGP-7:

1. This Maryland State Programmatic General Permit-7 (MDSPGP-7) applies to the discharge of dredged or fill material and/or the placement of structures into waters of the United States within the State of Maryland (except for the Chesapeake and Delaware Canal) 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-7 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-7 require compliance with all terms and conditions of the MDSPGP-7, 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.

2. Unauthorized activities may receive after-the-fact authorization under MDSPGP-7, as appropriate. Any application determined to be eligible for after-the-fact authorization will follow the applicable Category A or Category B review process.

B. Activities Not Authorized by the MDSPGP-7:

1. Single and complete projects that have more than minimal individual and/or cumulative adverse environmental effects.

2. Single and complete projects that do not comply with the terms and conditions of the MDSPGP-7, which includes impact thresholds, activity specific conditions and general conditions.

3. Instances where the Environmental Protection Agency's (EPA) Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under Section 404(c) of the CWA to prohibit, deny, restrict, or withdraw the use for specification, of any defined area for the discharge of dredged or fill material at the proposed site.

4. Activities that have been denied state authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have not received general or individual Water Quality Certification (WQC) or a Coastal Zone Consistency (CZM) determination.

5. Activities that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP-7 without prior review and approval under the appropriate category of the MDSPGP-7, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP-7 without prior approval by the Corps.

6. Even if a portion of the project is not dependent on the rest of the project, the MDSPGP-7 does not apply when any portion of the project is subject to an enforcement action by the Corps or EPA. In appropriate cases where the activity complies with the

terms and conditions of the MDSPGP, an after-the-fact MDSPGP authorization may be used for resolution of a violation following a consideration of whether the violation being resolved was knowing or intentional and other indications of the need for a penalty.

C. General Permit Review Categories:

Under the MDSPGP-7, activities may qualify for the following:

1. **Category A:** Corps review is not required for activities described in Section III.B.1. Category A (Corps Review Not Required). To be eligible for authorization under Category A, activities must meet the Category A activity-specific impact limits and conditions and the General Conditions of the MDSPGP-7. Submittal of a Federal/State Joint Permit Application to the Maryland Department of the Environment (MDE) may or may not be required for verification of a MDSPGP-7 Category A activity. If the terms of a Category A activity states that "No application is required for Corps authorization", the applicant does not need to submit an application for written Corps verification for the Category A MDSPGP-7 activity as long as all terms and activity-specific conditions of the Category A activity and the General Conditions of the MDSPGP-7 are met. See specific MDSPGP-7 activity for further instructions. The permittee must comply with other applicable federal laws.

2. **Category B:** Corps review and written verification from the Corps is required for Category B activities, as described in Section III.B.2. Category B (Corps Review Required). The Corps will evaluate these proposed activities on a case-by-case basis to determine whether the activities comply with the terms and conditions of the Category B activity-specific impact limits and conditions and the General Conditions of the MDSPGP-7. When agency coordination is required, the Corps will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-7 and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

Submittal of a Federal/State Joint Permit Application is required for all Category B activities, and written approval from the Corps must be received. The Corps' case-by-case review of a reporting Category B activity may result in activity-specific special conditions to MDSPGP-7 authorizations to ensure that the adverse environmental effects are no more than minimal. These can include permit conditions such as time-of-year restrictions, the use of best management practices, and/or compensatory mitigation requirements to offset authorized losses of jurisdictional waters. Activity-specific special conditions may also be added by the Corps to the MDSPGP-7 Category B verification for compliance with the National Historic Preservation Act, the Endangered Species Act (ESA), or other federal laws after consultation with the appropriate agencies.

Projects ineligible for Category A may alternatively qualify for Category B or alternate

Corps permit review procedures. The impact thresholds for Categories A and B are defined for each activity authorized under the MDSPGP-7. This MDSPGP-7 does not affect the alternate Corps permit review procedures or activities exempt from Corps regulation.

D. Project Criteria Requiring Category B Review:

The following situations list the criteria that require notification to the Corps via the Federal/State Joint Permit Application and review as a reporting Category B activity. Application must be submitted to MDE for Corps authorization. The applicant shall not begin the project until notified by the Corps in writing that the project may proceed under the MDSPGP-7, which may include special conditions imposed by the Corps.

1. A project that does not meet the activity-specific impact limits and requirements of any activity described in Category A.

2. A project that will occur along and/or within 150 feet of the horizontal limits of a federal navigation project. A Federal Navigation Channel Map is provided in Appendix A of this permit or at http://www.nab.usace.army.mil/Missions/CivilWorks/NavMaps.aspx. Please see the Baltimore District's webpage to view the *Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels*: https://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf.

3. A project proposed in or adjacent to any proposed or existing federally authorized civil works project ("USACE project") (including, but not limited to, federal navigation projects, levees, floodwalls, dams, or other work built or maintained but not necessarily owned by the United States) requiring Section 408 review from the Corps pursuant to Section 14 of the Rivers and Harbors Act of 1899, (33 U.S.C. 408) (Section 408). For additional information regarding Section 408, please see the following link: https://www.nab.usace.army.mil/Missions/Regulatory/Section-408-Requests/.

4. Category B review by the Corps is required for projects that otherwise meet the requirements for Category A review, but that are grandfathered from MDEs permit requirements.

5. A project that requires an application submittal for written Corps authorization under Section 10 and/or 404 and that is exempt from MDEs permit requirements or not regulated under applicable state law.

6. A project that is a violation of Section 301 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899 and does not meet the activity specific Category A conditions. NOTE: The Corps has discretion to request Category A after-the-fact permit applications.

7. A project that may adversely affect Essential Fish Habitat (EFH) and requires

consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. (see applicable activity-specific and general conditions of the MDSPGP-7).

8. A project that may have effects to anadromous, catadromous, and/or other estuarine aquatic species not managed under a federal fisheries management plan and requires consultation under Section 2(a) of the Fish and Wildlife Coordination Act (see applicable activity-specific and general conditions of the MDSPGP-7).

9. A project that requires additional consultation under Section 106 of the National Historic Preservation Act due to the potential to cause effects to any historic properties listed, determined to be eligible for listing, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The application must state which historic properties might have the potential to be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the Maryland Historical Trust (MHT) and the National Register of Historic Places. Prior to commencing work, prospective permittees for activities that do not require an application submittal should coordinate with the MHT concerning the potential for the presence of historic properties that may be affected by the proposed activity.

10. A project that requires additional consultation due to the potential to affect any federally listed threatened or endangered species or a species proposed for such designation, or which will destroy or adversely modify the designated critical habitat of such species, as identified under Section 7 of the federal ESA. The application must include the name(s) of the endangered or threatened species (or species proposed for listing) that may be affected by the proposed work or that utilize the designated critical habitat (or critical habitat proposed for such designation) that may be affected by the proposed work. Prior to commencing work, prospective permittees for activities that do not require an application submittal should obtain information on the location of federally listed threatened and endangered species and their critical habitat from the offices of the United States Fish and Wildlife Service and National Marine Fisheries Service or their websites at: https://ecos.fws.gov/ipac and https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations- greater-atlantic-region, respectively.

11. A project that involves temporary fill in place greater than one year, does not meet culvert countersinking general condition requirements, or involves 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 (See General Condition 31. Removal of Temporary Fill Structures and Mats and 34. Countersinking Pipes and Culverts).

12. A project that includes proposed work located in an area encumbered by an existing site protection instrument such as a conservation easement, deed restriction, or declaration of restrictive covenants required as a condition of a prior Corps, MDE, or

EPA authorization.

13. Projects where the regulated activity is not wholly located within the State of Maryland (i.e., the regulated activity extends across state boundaries).

14. Regulated activities associated with the construction of mitigation banks or in-lieu fee sites developed to meet the requirements of the Corps and the EPA April 10, 2008, Mitigation Rule, or any subsequent guidance/regulations addressing compensatory mitigation banks and/or in-lieu fee sites.

15. Reasonably related applications:

a) If the Corps previously issued a verification for work associated with an overall project, any subsequent additional regulated work that is needed for the overall project to function and meet its intended purpose,

b) If MDE determines that a project is a Category B, and MDE is processing other Category A applications which are needed for the overall project to function and meet its intended purpose, then all such related applications must be reviewed by the Corps.

c) If the Corps is reviewing a Category B application and MDE receives an application for attendant features associated with an overall project, then the newly received application received by MDE is also a Category B activity.

16. Applications containing a request for a Corps jurisdictional determination (JD) (i.e., preliminary JD or approved JD).

E. Alternate Corps Permit Review:

Activities that require DA authorization, but that do not comply with the conditions, terms, and limitations of the MDSPGP-7, do not qualify for this MDSPGP-7, and will require separate DA authorizations/permits. A completed Federal/State Joint Permit Application Form must be submitted to MDE for Corps evaluation under alternate Corps permit review procedures. Individual WQC and CZM concurrence are required where applicable from MDE before Corps permit issuance. Please note that the Corps retains discretionary authority as outlined in Section III.B.5.

III. APPLICATION SUBMITTAL AND REVIEW PROCESS:

Applicants who propose regulated activities must complete the Federal/State Joint Permit Application Form (application) in accordance with the application instructions.

Delineation: The application must include a delineation of any potential aquatic resources such as wetlands, other special aquatic sites, and other waters, including lakes and ponds, perennial, intermittent, and ephemeral streams, ditches,

impoundments, and basins on the project site. The delineation of wetland boundaries shall be accomplished in accordance with the current USACE manual for identifying jurisdictional wetlands and in accordance with appropriate regional supplements and guidance issued by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a significant delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters.

Jurisdictional Determination: All aquatic resources that would be affected by the permitted activity on the parcel will be treated as jurisdictional unless a valid Approved JD issued by the Corps is submitted with the application. In accordance with Regulatory Guidance Letter 16- 01, all waters will be assumed to be jurisdictional in the absence of an Approved JD. The Corps is not required to make a formal determination whether a particular wetland or water is subject to jurisdiction under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899 before issuing an individual permit or general permit verification. The applicant always retains the right to request an Approved JD for the project area and any applications containing a Jurisdictional Determination request shall be reported to the Corps as a Category B reporting activity. Please note that requesting an Approved JD may delay permit review timeframes.

Endangered Species: If any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the application must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act.

Historic Properties: If the proposed work might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, the National Register of Historic Places, the application must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

United States Army Corps of Engineers Federally Authorized Civil Works Projects: For activities that require permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will later or temporarily or permanently occupy or use a United States Army Corps of Engineers federally authorized civil works projects, the application must include a statement confirming that the applicant has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

Existing Site Protection Instruments and Proposed Encroachments: An application for a project that proposes work in an area encumbered by an existing site protection instrument such as a conservation easement, deed restriction, or declaration of restrictive covenants required as a condition of a prior Corps, MDE, or EPA authorization must also include the following for Corps review:

(1) A copy of the recorded site protection instrument,

(2) A scaled survey drawing of the project area depicting the area encumbered by the site protection instrument as well as the proposed work,

(3) Current contact information for the grantee/easement holder charged with enforcement of the site protection instrument, and

(4) Written concurrence for the proposed project from the grantee/easement holder charged with enforcement of the site protection instrument, if required under the terms of the instrument.

Linear Projects: Applications for linear projects must submit information describing the location of the overall linear project's point of origin, the location of the terminal point, the locations and proposed impacts (in acres or other appropriate unit of measure) for all proposed crossings of waters of the United States that require Department of the Army authorization, and other locations and proposed impacts to aquatic resources that are intended to be used to authorize any part of the proposed project or any related activity requiring Department of the Army authorization.

Application Submittal: Applicants must submit the complete permit application to the Regulatory Services Coordination Office, Water Management Administration, MDE. General information and application forms can be obtained by calling the Regulatory Services Coordination Office at 1-800-876-0200. The application can also be printed from MDEs web site: http://www.mde.state.md.us/programs/Water/WetlandsandWaterways/PermitsandApplications/. The complete application should be submitted by the applicant to the Regulatory Services Coordination Office at the earliest possible date. Submission of an application for Corps verification is not required for certain activities identified in Category A of the MDSPGP-7 Authorized Activity Index (Section IV.A.). All terms and conditions of the MDSPGP-7 still apply to these activities.

Upon receipt, the permit applications are reviewed by the MDE in accordance with their procedures and the MDSPGP-7 procedures. MDE will attach verification of the applicability of the MDSPGP-7 to the state authorization for Category A MDSPGP-7 activities (non-reporting to the Corps). Applications for projects identified as Category B MDSPGP-7 activities in accordance with the MDSPGP-7 permit and procedures, will be forwarded to the Corps. Upon an applicant's receipt of a determination from MDE that an activity requires Corps review, digital submittals of the application materials from the applicant to the Corps are strongly encouraged to facilitate the most efficient processing

of the permit application. Electronic submittals may be addressed to: nab-regulatory@usace.army.mil. The electronic submittal must include the permit tracking number in the subject line and electronic copies of the complete permit application package, the acknowledgement letter from MDE with the permit tracking number and initial MDSPGP-7 Category B determination, and other supplemental documents such as photos, agency correspondence, surveys, etc.

Screening: After the application has been received, MDE will screen the application for Submerged Aquatic Vegetation (SAV) boundaries by utilizing composite mapping of the five (5) most recent years of verified SAV data (derived from the Virginia Institute of Marine Science aerial surveys located at https://www.vims.edu/research/units/programs/sav/access/maps/index.php. In addition, SAV surveys shall also be conducted during the growing season as required by activity specific conditions of the MDSPGP-7. The applicant may request the Corps to conduct SAV surveys; however, this may significantly delay permit review timeframes.

Application Evaluation and Compensatory Mitigation: In reviewing the application materials for the proposed activity, the Corps will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. Additional information will be requested if needed to help make a determination whether adverse environmental effects are minimal. For example, project modifications involving avoidance, minimization, and/or compensatory mitigation for unavoidable impacts may be requested to ensure impacts to aquatic resources are minimal. Compensatory mitigation is generally required for wetland loses greater than 5,000 square feet and/or stream losses greater than 3/100 acre (1,307 square feet), that require Corps evaluation. For wetland losses of 5,000 square feet or less and stream losses of 3/100 acre (1,307 square feet) or less that require an application submittal to the Corps, 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. When compensatory mitigation is required by the Corps, a minimum one-to-one replacement mitigation acreage ratio will be required. Exceptions to the mitigation requirement may be made by the Corps on a project-specific basis if a determination is made that either some other form of mitigation or waiver would be more appropriate. The applicant is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. The Corps will consider the proposed compensatory mitigation the applicant has included in the proposal when determining whether the adverse environmental effects of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the MDSPGP-7 and that the adverse effects on the aquatic environment are minimal, after considering the mitigation, the Corps will notify the permittee and include any conditions the Corps deems necessary. When mitigation is required, no work in waters of the United States may occur until the Corps has authorized the permit and the compensatory mitigation plan.

Activity-Specific Category B Waiver of Applicable Limits: For certain activities under a Category B evaluation process, an applicant may request a waiver for a particular limit specified in the MDSPGP activity-specific terms and conditions when submitting an application. If the applicant requests a waiver of an applicable MDSPGP activity limit, as provided for in MDSPGP-7 Category B activities a(5), b(1), b(3), b(4), f(1), f(2), f(3), f(4), and (i), and the Corps determines after coordinating with the resource agencies that the propose MDSPGP activity will result in no more than minimal adverse environmental effects, the Corps may grant such a waiver. Following the conclusion of the Corps' review of the application, the Corps prepares an official, publicly available decision document. This document discusses the Corps' findings as to whether a proposed MDSPGP activity qualifies for MDSPGP authorization, including compliance with all applicable terms and conditions, and the rationale for any waivers granted, and activity-specific conditions needed to ensure that the activity being authorized by the MDSPGP will have no more than minimal individual and cumulative adverse environmental effects and will not be contrary to the public interest. The waiver is not granted unless the Corps makes a written determination that the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects and issues the MDSPGP verification.

Corps' Decision: In reviewing a Category B application, the Corps will determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. When making minimal adverse environmental effects determinations, the Corps will consider the direct and indirect effects caused by the proposed MDSPGP-7 activity. The Corps will also consider the cumulative adverse environmental effects caused by the proposed MDSPGP-7 activity and whether those cumulative adverse environmental effects are no more than minimal. The Corps will also consider site-specific factors, such as the environmental setting in the vicinity of the MDSPGP-7 activity, the type of resource that will be affected, the functions provided by the aquatic resources that will be affected, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the MDSPGP-7 activity (e.g., partial or complete loss), the duration of the adverse effects (e.g., temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. If an appropriate functional or condition assessment method is available and practicable to use (e.g., Maryland Wetland Assessment Methodology, Maryland Stream Mitigation Framework), that assessment method may be used by the Corps to assist in the minimal adverse environmental effects determination. The Corps may add case-specific special conditions to the MDSPGP-7 authorization to address site-specific environmental concerns.

A. Federal, State, and Local Approvals:

Applicants are responsible for ensuring that all required federal, state, and local licenses, permits, and approvals are obtained for projects authorized under the

MDSPGP-7. This MDSPGP-7 may authorize projects that are exempt by MDE, but may be regulated by the Corps. Required authorizations include, but are not limited to, the following state approvals, issued by the MDE, as applicable, which must be obtained or waived in order for the MDSPGP-7 authorization to be valid:

1. Nontidal Wetlands authorization.

2. Waterway Construction authorization.

3. Tidal Wetlands authorization.

4. Water Quality Certification.

5. Coastal Zone Consistency.

B. MDSPGP-7 Verification Procedures (when an application is required):

1. Category A (Corps Review Not Required):

Permit applications are reviewed by MDE in accordance with their review procedures and the MDSPGP-7 procedures. Category A activity-specific thresholds are based on impacts for the overall project. MDE will attach verification of the applicability of the MDSPGP-7 to the state authorization if they determine that the project qualifies as a Category A activity.

Certain MDSPGP-7 Category A activities may require a public notice under state regulations (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, located in Use III or IV waters, or sensitive habitats identified by state law or regulation etc.). Under these circumstances, MDE will place the project on state public notice, in response to which the Corps may either provide comments or invoke discretionary authority to require an alternate Corps permit review because of concerns for the aquatic environment or for any other public interest factor. At the conclusion of MDEs review, if MDE verifies that the project qualifies for MDSPGP-7, MDE will provide written verification to the applicant that the activity is eligible for authorization under the MDSPGP-7 and the work can proceed as a Category A activity, provided all required state and local authorizations are obtained, and the Corps is not requiring an alternate Corps permit review.

2. Category B (Corps Review Required):

Applications for projects identified as Category B activities will be forwarded to the Corps for review. The Corps' determination of eligibility under the MDSPGP-7 will be based on the impacts of each single and complete project. The Corps will consider any comments from federal and state resource agencies concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-7 and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

General agency coordination is required for:

- All MDSPGP-7 activities that require a Category B review and result in the loss of greater than 0.25 acres of waters of the United States.

- Category B activities where an applicant requests a specific written waiver of an applicable limit, as provided for in Category B activities: a(5), b(1), b(3), b(4), f(1), f(2), f(3), f(4), and (i);

  - MDSPGP-7 Category B (a)(5) Boat Ramp Construction, Repair, Expansion, and Replacement activities where the boat ramp exceeds 24 feet in width, or involves discharges greater than 50 cubic yards;

  - MDSPGP-7 Category B(b)(1) General Maintenance activities that extend further than 500 linear feet in any direction from the structure or proposals for blasting or other form of uncontained in-water demolition.

  - MDSPGP-7 Category B(b)(3) Bulkhead Repair or Replacement, including Stone Toe Protection activities in excess of three (3) feet channelward of the existing bulkhead, impacts to waters of the United States greater than 10,000 square feet, or involve discharges of dredged or fill material into special aquatic sites exceeding a net total of one square foot per linear foot (e.g., 100 square feet maximum impact to special aquatic sites for a 100-foot long bulkhead);

  - MDSPGP-7 Category B(b)4 Maintenance of Existing Drainage Ditches activities in excess of 0.5 acres of loss of tidal waters of the United States.

  - MDSPGP-7 Category B(f)(1) Tidal Revetments and Other Tidal Shoreline Erosion Control Structure activities in excess of 2,000 linear feet along the shoreline or extends greater than 25 feet channelward of the mean high-water line.

  - MDSPGP-7 Category B(f)(2) Living Shoreline activities in excess of 50 feet channelward of the mean high-water line;

  - MDSPGP-7 Category B(f)(3) New Bulkheads, including Stone Toe Protection activities where the bulkhead extends greater than three (3) feet channelward of the mean high-water line, the activity is in excess of 1,000 linear feet, or the stone toe protection placed along the base of the new bulkhead extends greater than ten (10) feet channelward of the mean high water line;

  - MDSPGP-7 Category B(f)(4) Nontidal Bank Stabilization Activities in excess of 1,000 linear feet, or fills greater than one cubic yard per running foot;

  - MDSPGP-7 Category B(i) Emergency Situations in excess of 1,000 linear feet bank stabilization or 0.5 acre loss of waters of the United States.

When agency coordination is required as described above, the Corps will immediately provide via email a copy of the complete application and coordination notices to the appropriate federal and state offices (the EPA, United States Fish and Wildlife Service (FWS), Maryland Department of Natural Resources (MD DNR), and, if appropriate, MHT, National Marine Fisheries Service-Protected Resource Division (NMFS-PRD), National Marine Fisheries Service-Habitat and Ecosystem Services Division (NMFS-HESD), United States Coast Guard (USCG), and Natural Resources Conservation Service (NRCS).The agencies will have 15 calendar days from the date the material is transmitted to provide the Corps via telephone or email with substantive, site-specific comments. The resource agencies may request a 10 calendar day extension, provided the 15 day comment period has not closed. For Category B(i) - *Emergency Situations* activity requiring agency coordination, the resource agencies will have 3 calendar days from the date the material is transmitted to notify the Corps via telephone or email with substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal.

For those Category B projects that may adversely affect EFH or federally listed endangered species where the prospective permittee is not a federal agency, the Corps will provide NMFS and/or FWS a 30-day coordination notice, including an EFH assessment and/or the Not Likely to Adversely Affect (NLAA) verification form and project plans, as appropriate. NMFS and/or FWS will have 30 calendar days from the date the material is transmitted via email (i.e., when NMFS receives the coordination notice from the Corps). The Corps will provide a response to NMFS-HESD within 30 calendar days of receipt of any EFH conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

In addition, the Corps will provide a 30-day coordination notice to MHT for those projects that have potential to affect historic resources or where the project will have adverse effects to historic properties. Furthermore, the Corps will coordinate with Tribal Nations in accordance with the Baltimore District's tribal coordination processes.

The Corps will fully consider agency comments received concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-7, including the need for compensatory mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The Corps will provide no response to the resource agency, except as provided above. The Corps will indicate in the administrative record associated with the application that the resource agencies' concerns were considered. The Corps review will conclude with one of the following determinations:

- Project is eligible for authorization under the MDSPGP-7;

- Specific modifications or conditions, such as submission of a mitigation plan to reduce the adverse environmental effects so that they are no more than minimal, are necessary to qualify for authorization under the MDSPGP-7; or

- Project is ineligible for authorization under the MDSPGP-7 and, therefore, requires an alternate Corps permit review process.

The Corps will notify MDE and the applicant when the project review has been completed. The project must not be initiated until written notification is received from the Corps and the following applicable verifications have occurred:

- The Corps provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-7 and that work can proceed as a Category B activity, provided all required state and local authorizations are obtained. The activities must still comply with all the terms and conditions of the MDSPGP-7, including the activity-specific impact limits and requirements identified in the Description of MDSPGP-7 Authorized Activities, and any special conditions imposed by the Corps.

- The Corps provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-7 with activity-specific conditions that state the required mitigation (if required). The authorization will include the necessary conceptual or detailed mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the Corps has approved a specific mitigation plan.

- The Corps may provide written notice to the applicant that the proposed work interferes with a federally authorized civil works project pursuant to Section 408 permission, which includes federal navigation projects. The Corps will coordinate with the applicant in order for the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-7 provided all required state and local authorizations are obtained.

- The Corps or MDE may provide notice to the applicant that the proposed work may adversely affect EFH. The Corps will coordinate with the applicant in order for the applicant to implement EFH conservation recommendations detailing measures for avoiding, mitigating, or offsetting the impact of the activity on EFH. Conservation recommendations made by NMFS-HESD will generally be included as a MDSPGP-7 permit requirement by the Corps, and the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-7. Work can proceed, provided all required state and local authorizations are obtained. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-7 process, the applicant will be notified in writing that an alternate Corps permit review process is required for the project.

- The Corps may provide notice to the applicant that the proposed work may affect federally listed threatened or endangered species or their critical habitat and Section 7 consultation would then be required.

- The Corps may provide notice to the applicant that the proposed work may affect historic properties and/or it appears that further project modifications will be necessary to minimize or avoid impacts to historic resources or mitigate impacts to historic resources.

- If a project does not qualify for the MDSPGP-7 the Corps will provide written notice to the applicant and MDE that an alternate Corps permit review process is required.

3. Agency Objection:

The federal resource agencies FWS, EPA, or NMFS may object to authorizing a proposed project under the MDSPGP-7 and request a specific project be evaluated under individual permit procedures within the 15-day agency notification (or 30-day EFH review and comment period for NMFS-HESD). The comments must explain why the agency believes the adverse environmental effects will be more than minimal. The Corps will fully consider any comments from the federal agency concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-7, including the need for avoidance, minimization, and compensatory mitigation to ensure that the adverse environmental effects of the proposed project are no more than minimal. The Corps will notify MDE and the applicant if a decision is made to exercise discretionary authority and review the project under the individual permit review process.

4. Alternate Corps Permit Review:

When a project is ineligible under the terms and conditions of the MDSPGP-7, the Corps will notify MDE and the applicant that the project will require further evaluation under an alternative permit review procedure. All information submitted by the applicant for the MDSPGP-7 review will be used to initiate review by the Corps for the alternate permit. Additional information may be requested to complete the review.

5. Corps Discretionary Authority:

The Corps retains discretionary authority on a case-by-case basis to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or any other factor of the public interest. This authority may be invoked for projects with cumulative environmental impacts that may be more than minimal, or if there is a special resource or concern associated with a particular project.

IV. MDSPGP-7 CATEGORIES:

A. Description of MDSPGP-7 Authorized Activities:

1. Category A and Category B Activities:

The following activities are authorized under the MDSPGP-7 provided the proposed regulated activities comply with all terms, general conditions, best management practices, and processing procedures identified and required by the MDSPGP-7 and the following applicable Category A and Category B activity-specific description(s) and requirement(s). Note: Any required application is to be submitted to MDEs Regulatory Services Coordination Office. In the following Authorized Activities, this has been abbreviated as MDE.

a) Boating and Navigation-Related Projects, Structures, and Activities:

a(1) Channel and Harbor Navigation Aids:

Authorizes placement of aids to navigation and regulatory markers (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) Channel and harbor navigation aids must be approved by and installed in accordance with the requirements of the USCG (see 33 CFR, chapter I, subchapter C, part 66).

(b) Category B Impact Limits and Requirements:

(i) Application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

a(2) State Regulatory Markers:

This activity authorizes placement, by the State of Maryland, of regulatory and informational markers that do not require approval by the USCG (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization**.**

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

a(3) Piers:

This activity authorizes private residential and commercial piers (e.g., piers associated with aquaculture) that are not associated with marinas and allows for the addition of boat lifts and personal watercraft (PWC) lifts to an existing authorized boat slip. This activity does not authorize marina piers, community piers, publicly owned piers, or governmental piers. Compliance with the following design conditions is required for the entire pier project, including proposed work and existing, previously authorized structures. For example, a new platform is proposed to be added to an existing pier with an "L" head. The proposed work would meet Category A only if the total area of the new platform and the existing "L" head did not exceed 200 square feet. (Section 10) (Navigable waters of the United States including nontidal navigable waters).

(a) Category A Impact Limits and Requirements:

(i) This activity authorizes only one (1) pier (fixed or floating), six (6) mooring piles, and up to four (4) boat slips (with or without hoists or lifts for vessels of any type), and up to two (2) additional personal watercraft slips (with or without lifts), exclusively for personal watercraft, per property.

(ii) This activity does not authorize marina piers, community piers, publicly owned piers, or governmental piers (e.g., structures to be used by multiple residents of a condominium complex, members of a specific homeowner's association, commercial piers, military piers, etc.).

(iii) This activity does not authorize enclosed buildings or other structures. Enclosed buildings or other structures must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iv) This activity does not authorize piers that exceed 100 feet in length over vegetated marsh wetlands. Piers exceeding 100 feet in length over vegetated wetlands must be evaluated under Category B or alternate Corps permit review procedures, as appropriate.

(v) The main section of fixed open pile and floating piers crossing unvegetated open waters must not exceed six (6) feet in width. Fixed piers must have decking constructed a minimum of four (4) feet above mean-low water (MLW). Alternatively, fixed open pile piers crossing open waters must have a width not to exceed five (5) feet and a minimum height of three (3) feet above MLW.

(vi) Piers crossing areas of vegetated wetlands must not exceed three (3) feet in width and must be constructed a minimum elevation of three (3) feet between the decking and the vegetated wetland ground elevation.

(vii) Piers crossing areas of mapped SAV (documented as existing in the last five years of available data as specified in Section III) must not exceed 4 feet wide and must be constructed a minimum elevation of four (4) feet above MLW.

(viii) No floating piers or auxiliary pier platforms shall be permitted in areas of mapped SAV (documented to exist in the last five years as specified in Section III).

(ix)The total area of all fixed and floating auxiliary pier platforms including “T” heads, “L” heads, and step-down platforms must not exceed 200 square feet (not including the segment of the main pier section to which the platform is attached) and must not be located over wetlands or SAV (documented to exist in the last five years as specified in Section III).

(x) Floating auxiliary structures authorized by this activity are limited to floating finger piers, including small floating personal watercraft piers and platforms; and floating gangways provided the total square footage of these floating structures does not exceed 200 square feet for any one project.

(xi)Pier platforms must be constructed in a minimal depths of 2-feet MLW except in canals where a parallel walkway may be constructed adjacent to an existing or proposed bulkhead.

(xii) Platforms proposed adjacent to an existing or proposed bulkhead within a canal must be parallel to the bulkhead and must not exceed six (6) feet in width.

(xiii) Finger piers or platforms must be constructed in a minimum depth of two (2) feet of open water at Mean Low Water.

(xiv) The project must not include more than two (2) osprey poles per property.

(xv) The project must not include more than two (2) three-pile dolphins.

(xvi) The pier must not include more than two (2) three-foot-wide finger piers.

(xvii) Piers must not extend within 100 feet of an MD DNR-approved water ski course.

(xviii) The pier must not come within 20 feet of any marked or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of the near design edge (shown

in the Navigation Setback Guidance) of a federal navigation channel or within established local harbor lines.

(b) Category B Impact Limits and Requirements:

This activity authorizes piers that exceed design criteria of Category A and meet the activity-specific terms and conditions below and the General Conditions of this MDSPGP-7. Design criteria would include the single and complete project with both existing authorized and proposed aspects of the structure.

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) Piers must not exceed eight (8) feet wide, a 400-square foot fixed or floating platform including Ts, Ls, and step-down platforms, eight (8) mooring piles, four (4) three (3) foot wide finger piers, and/or create no more than ten (10) slips, including boat lifts and personal watercraft lifts.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Only one (1) floating or fixed pier per property can be authorized under the MDSPGP-7.

(iii) Whenever possible, piers shall be constructed to avoid vessel operation and pier shading in areas containing SAV (present or documented to exist in the last five years as specified in Section III). This can be achieved by locating fixed and/or floating piers outside of SAV, minimizing pier width, increasing decking height above MLW, extending piers to deeper water, and/or mooring vessels in depths greater than four feet relative to mean low water. In instances where mooring vessels outside of SAV is not practicable, the use of boat lifts should be considered to minimize damage and shading of SAV during vessel operation and mooring.

(iv) This activity does not authorize filling or dredging.

(v) Floating structures will be constructed to avoid resting on the bottom substrate during periods of low water. This can be achieved by locating the entire floating structure in water deeper than two feet relative to mean low water. If this is not possible, chocks, stoppers, or bracing should be employed.

(vi) If the proposed structure(s) are being constructed for the purpose of boat mooring, sufficient water depths must exist to float the vessel at all stages of the tide or mean low water.

(vii) Authorization of the pier is based upon current water depths; the use of boat propellers for dredging is not authorized.

(viii) It should not be presumed that this pier authorization predetermines, in any way, that future requests to dredge for navigational access would be similarly authorized. Any decision on future dredging proposals adjacent to this property will be based upon existing, historical, physical, and biological characteristics of the waterway, and will include consideration of water depths, SAV, consideration of any other aquatic resources present, or other factors that may be relevant.

(ix) Construction of the pier/platform shall be conducted from uplands, open water, or from the structure itself.

(x) Construction mats or other temporary fills used as best management practices for placing equipment in wetlands are not authorized by this activity; however, impacts associated with construction mats may be authorized under Category A of Section IV.A.1.e(7), Temporary Construction Access, Stream Diversion, and Dewatering. If the project is ineligible for Category A, the single and complete project, including the proposed pier structure and temporary construction access, will be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(xi) Auxiliary structures such as gazebos, tool sheds, etc., are not authorized by this MDSPGP-7 and will be reviewed under alternate Corps permit review procedures if they affect waters of the United States.

(xii) Alternate Corps permit review procedures are required for structures and float associated with a new or previously unauthorized public, commercial marina, community, or governmental pier or boating facility. A boating facility is defined as those facilities that provide for a fee, rent, or sell mooring space, such as marinas, yacht clubs, boat clubs, boat yards, town facilities, “dockominiums,” etc.

(xiii) Piers must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high-water shoreline and/or vegetated tidal wetlands.

(xiv) Finger piers must not exceed the proposed slip length.

(xv) Category B or alternate Corps permit review procedures are required for structures or floats that are located within the horizontal setback limits of a Corps Federal Navigation Project.

(xvi) Piers, auxiliary structures, floating docks, osprey poles, and/or mooring piles and boats moored thereto shall not extend into navigable channels marked either by the USCG or the USCG approved state system.

a(4) Marina/Community Piers Reconfiguration:

This activity authorizes reconfiguring an existing, previously authorized marina, community, or government pier, including the construction of boat lifts and finger piers. (Section 10) (Navigable waters of the United States including nontidal navigable waters).

(a) Category A Impact Limits and Requirements:

(i) This Category A activity does not authorize additional slips or dock spaces.

(ii) This Category A activity authorizes the construction of boat lifts, finger piers, platforms, or other structures within existing, authorized boat slips.

(b) Category B Impact Limits and Requirements:

(i) This Category B activity authorizes marina reconfigurations that propose additional slips or dock spaces.

(ii) Construction of no more than two additional slips within the existing marina/piers footprint is authorized.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity does not authorize dredging.

(iii) The reconfiguration may not increase the existing marina/piers footprint (i.e., outer limits) of waters occupied by the existing community pier or marina structures/slips, etc.

(iv) Alternate Corps permit review procedures are required for marina/community pier reconfigurations that propose an increase in the existing marina footprint and any new buildings on the pier.

(v) There must be no increase in channelward encroachment beyond existing piers and associated structures.

(vi) This activity does not authorize construction of new buildings on piers.

a(5) Boat Ramp Construction, Repair, Expansion, and Replacement:

This activity authorizes discharges of dredged or fill material and the construction of structures such as wing walls and access piers associated with construction of new boat ramps and the repair, expansion, and replacement of existing boat ramps (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The boat ramp must not exceed 12 feet in width.

(ii) The boat ramp must not extend more than 30 feet channelward of the mean high/ordinary high-water mark or further than a water depth of -3.0 feet at mean low water in tidal areas, whichever is less.

(iii) Boat ramps and associated discharges must not be placed in special aquatic sites, including wetlands, SAV, mudflats, sanctuaries and refuges, and riffle and pool complexes, etc.

(iv) Access piers must not exceed five (5) feet in width.

(v) Fixed access piers must be constructed a minimum of three (3) feet above the mean low water level in tidal areas.

(b) Category B Impact Limits and Requirements:

(i) The boat ramp must not exceed 24 feet in width, unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects.

(ii) The boat ramp must not extend more than 25% of the width of any waterway or further than a water depth of -3.0 feet at mean low water in tidal areas, whichever is less.

(iii) The discharge of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs into waters of the United States must not exceed 50 cubic yards, unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects.

(iv) All boat ramps and associated discharges must be designed to eliminate or minimize impacts to special aquatic sites, including but not limited to wetlands, SAV, mudflats, sanctuaries and refuges, and riffle and pool complexes, etc.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity authorizes the discharge of concrete, rock, crushed stone, or gravel into forms, or placement of pre-cast concrete planks or slabs, or other suitable material within the limits of the boat ramp only.

(iii) Excavation must be limited to the area necessary for site preparation.

(iv) This activity does not authorize dredging to provide access to the boat ramp.

(v) This activity does not authorize use of materials not structurally sound.

(vi) Alternate Corps permit review procedures are required for boat ramps that may cause more than a minimal adverse effect on navigation.

(vii) Authorization of the boat ramp and associated piers is based upon current water depths; propeller dredging is not authorized.

(viii) This activity authorizes a maximum of two access piers associated with the boat ramp.

(ix) Access piers must be directly abutting the boat ramp and must not extend more than the channelward extent of the boat ramp or the minimum necessary to provide adequate access to the boat ramp, whichever is less.

a(6) Mooring Buoys:

This activity authorizes placement of mooring buoys (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization. However, all mooring buoys must adhere to the MD DNR restrictions on where mooring buoys may be placed. See MD DNRs website at: https://dnr.maryland.gov/boating/Pages/srmbuoys.aspx.

(ii) No mooring buoy(s) will be placed in, or within 25 feet of, areas mapped by the Virginia Institute of Marine Science to contain SAV (documented to exist in the last five years as specified in Section III).

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Only non-commercial, single boat mooring buoys are authorized by the activity. Commercial (i.e., buoy is intended to be used by multiple parties – such as at a marina or restaurant) mooring buoys are not authorized under this activity and are instead subject to alternative Corps permit review procedures.

(ii) Water depths in the mooring areas shall be sufficient that moored vessels float at all stages of the tide. Boats should not hit bottom during low water conditions.

(iii) The mooring buoy(s) and vessels attached thereto must not be placed in a marked navigation channel, or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of a federal navigation channel, or block ingress to or egress from adjacent properties. An alternate Corps permit review procedure is required for moorings proposed to be located within federal navigation channel horizontal setback limits. Mooring buoys are not authorized within federal channel limits.

a(7) Structures in Fleeting and Anchorage Areas:

This activity authorizes structures, buoys, floats, and other devices placed within existing, authorized anchorage areas or fleeting areas to facilitate mooring vessels (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) The anchorage or fleeting areas must be established by the USCG.

(ii) Anchorages or fleeting areas not established by the USCG require alternate Corps permit review procedures.

(iii) Buoys must be approved by and installed in accordance with the requirements of the USCG (see 33 CFR, chapter 1, subchapter C, part 66).

a(8) Temporary Recreational Structures:

This activity authorizes temporary recreational buoys, markers, small floating docks, and similar structures placed for seasonal recreational use or for recreational use during special events, such as water-skiing competitions and boat races (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The buoys, markers, and structures must be removed from the water within 30 days after the specific event or season has ended.

(ii) The buoys, markers, and structures must be placed so that there is a buffer between them and any federal navigation channel. The buffer must be at least 50 feet or a distance of three times the authorized depth of the federal navigation channel, whichever is greater.

(iii) Category B or alternate Corps permit review procedures (Section 10) are required for temporary recreational structures that will be emplaced for longer than 30 days after the use is discontinued.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Temporary floating platforms at residential piers are not authorized under this activity.

(iii) Temporary seasonal recreational structures, such as small floating docks, may be installed during the applicable season inclusive of any year. Authorization for temporary seasonal structures under this MDSPGP-7 expires upon expiration of this MDSPGP-7. Permittees desiring to continue installing temporary

seasonal structures beyond this expiration date must request a new permit.

a(9) Maintenance Dredging Of Previously Authorized Dredged Areas In Tidal Waters:

This activity authorizes maintenance dredging below the mean high-water mark and removal of accumulated sediment for existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. The maintenance dredging area must have been previously authorized by the Corps and the dredging completed in accordance with the terms and conditions of the Corps authorization (Sections 10 and/or 404; limited to all tidal waters).

(a) Category A Impact Limits and Requirements:

(i) The proposed dredge area must not exceed 0.5 acre (21,780 square feet) and involve the removal of no more than 500 cubic yards of material.

(ii) Category A only authorizes mechanical (Section 10) dredging. All hydraulic dredging (Section 10/404) must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Maintenance dredging is prohibited from April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries to protect summer flounder nursery activities.

(iv) Dredged material that is deposited in an upland site must be properly contained and stabilized to preclude any runoff into adjacent areas. The upland area must be properly designed to contain the material.

(v) The discharge of dredged material for beneficial re-use into waters of the United States from a Category A Activity a(9) *Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters* must be specifically approved by MDSPGP-7 Category A Activity f(2) *Living Shorelines/Beach Nourishment* or another Category A MDSPGP-7 written verification. If beneficial re-use if proposed, the specific beneficial re-use of the dredged material must be specifically determined acceptable and approved for that re-use activity.

(vi) The discharge of dredged material for beneficial re-use into waters of the United States from this Category A Activity does not apply to sediments that do not meet applicable testing and criteria, including chemical and grain size analyses consistent with applicable Maryland regulations (e.g., COMAR 26.24.03.05 and 26.24.03.06D) and the Sampling & Analysis Considerations in the State of Maryland's, *Innovative Reuse and Beneficial Use of Dredged Material Guidance Document*;

(vii) Category A does not authorize dredging within SAV beds or shellfish beds. These activities must be reviewed under Category B or alternative permit review.

(viii) During the period March 16 through November 30, dredging within tidal waters in depths greater than -3 feet mean low water must be conducted behind turbidity curtains or other exclusion structure that would prevent aquatic animals from entering the dredge footprint. Dredging activities that would occur in this time period without the use of turbidity curtains or other exclusion devices must be reviewed under Category B or an alternate Corps permit review process.

(b) Category B Impact Limits and Requirements:

(i) Mechanical and hydraulic dredging (Section 10/404) up to the previously verified depths and boundary limits are authorized under Category B or alternate Corps permit review procedures, as appropriate.

(ii) Clean dredged material may be disposed of at an approved upland disposal site or at an approved beneficial, re-use site, provided the Corps finds the dredged material to be suitable for such disposal. The discharge of dredged material for beneficial re-use into waters of the United States from a Category B Activity a(9) *Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters* must be specifically approved by the Corps under MDSPGP-7 Category B Activity f(2) *Living Shorelines/Beach Nourishment* or another Department of the Army authorization.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Dredging must not be deeper than the water depths where the proposed dredge area will be connecting.

(iii) Proper siltation controls must be used including, but not limited to, silt fencing and turbidity curtains.

(iv) The proposed dredge area must not exceed the dredging depths and footprint as was previously authorized.

(v) Dredged depths must not exceed the authorized depths at mean low water, including over dredging.

(vi) Dredging activities shall avoid disturbing shorelines colonized by vegetated wetlands to the extent practicable. The dredging activities shall maintain a buffer distance between the toe/bottom of the final dredge slope (i.e., after the slope

has stabilized under normal conditions) and vegetated wetlands that is equivalent to four times the final dredging depth (e.g., 20 linear feet for a five-foot dredge depth) to prevent subsidence of these areas. This buffer shall be depicted on project plans when dredging is proposed adjacent to vegetated wetlands.

(vii) Authorization for maintenance dredging of the project under this MDSPGP-7 expires upon expiration of this MDSPGP-7. The applicant may continue to maintenance dredge after receiving verification of MDSPGP-7 until the expiration of the permit. Permittees desiring to continue maintenance dredging beyond this expiration date must request a new permit.

(viii)Applications for maintenance dredging must include a description of the type, composition (via grain size analysis), and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(ix) The Corps permit number, a copy of the previous verification, and documentation of completion of the dredging (e.g., post-dredge bathymetric surveys) shall be submitted with the application for verification of eligibility as a maintenance dredging activity.

a(10) New Minor Dredging in Tidal Waters:

This activity authorizes new minor dredging below the mean high-water mark (Sections 10 and/or 404; limited to all tidal waters).

(a) Category A Impact Limits and Requirements:

(i) The total dredged area must not exceed 1,500 square feet.

(ii) Total dredging volumes must not exceed 100 cubic yards of material.

(iii) The landward edge of the dredge cut must be at least 15 feet channelward of the mean high-water shoreline, unless the proposed dredge area is associated with a ramp, marine railway, or commercial travel lift.

(iv) Existing depths within the proposed dredge area must exceed three feet below mean low water.

(v) No dredging of or disposal into intertidal mudflats, wetlands, shellfish beds, and sites that support SAV (including sites where SAV is documented to exist within the last five years as specified in Section III), or anadromous fish spawning areas is authorized (https://dnr.maryland.gov/ccs/coastalatlas/Pages/default.aspx provides areas of potential effect).

(vi) New minor dredging is prohibited from April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries to protect summer flounder nursery activities.

(vii) Mechanical dredging only (Section 10) is authorized under Category A. Hydraulic dredging must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(viii) All dredged material must be deposited in an upland site and must be properly contained and stabilized to preclude any runoff into adjacent areas. The upland area must be properly designed to contain the material.

(ix) During the period March 16 through November 30, dredging within tidal waters in depths greater than -3 feet mean low water must be conducted behind turbidity curtains or other exclusion structure that would prevent aquatic animals from entering the dredge footprint. Dredging activities that would occur in this time period without the use of turbidity curtains or other exclusion devices must be reviewed under Category B or an alternate Corps permit review process.

(b) Category B Impact Limits and Requirements:

(i) The dredged area must not exceed 0.5 acre (21,780 square feet).

(ii) Dredging volumes must not exceed 400 cubic yards of material.

(iii) Hydraulic and mechanical dredging (Section 10/404) are authorized under Category B or alternate Corps permit review procedures, as appropriate.

(iv) Dredged material may be disposed of at an approved upland disposal site or at an approved beneficial, re-use site, provided the Corps finds the dredged material to be suitable for such disposal. The discharge of dredged material for beneficial re-use must be authorized under MDSPGP-7 Category B Activity f(2) *Living Shorelines/Beach Nourishment* or alternative Corps permit review process as appropriate.

(v) The applicant shall include information in the application regarding the presence, absence, or proximity of horned pondweed (*Zannichellia palustris*) within the project site within mesohaline waters (i.e., salinity 5-18 parts per thousand) of the mid and upper Chesapeake Bay. Distribution information of horned pondweed shall require recent ground-truth survey of the area by the applicant (i.e., employing a survey crew with relevant experience) during the period May 1 through June 15, of any year. Horned pondweed is less prevalent or does not occur upstream of the geographical exclusion lines shown on the Low Salinity Waters in Maryland Chesapeake Bay Map Appendix B and in tidal waters of the Maryland Atlantic Coastal Bays. Therefore, documentation regarding the presence or proximity of horned

pondweed is not required in these areas. The applicant may request the Corps conduct surveys for horned pondweed; however, this will require a Category B review and may result in significant delays in review timeframes.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Dredging must not be deeper than the water depths where the proposed dredge area will be connecting to.

(iii) Proper siltation controls must be used including, but not limited to, silt fencing and turbidity curtains.

(v) The dredging project must be a single and complete action and not affiliated with a proposal by local/county/state government to improve access throughout a tidal tributary.

(vi) No dredging for the connection of canals or other artificial waterways to adjacent water bodies is authorized.

(vii) Dredged depths must not exceed the authorized depths at mean low water, including over dredging.

(viii) Dredging activities shall avoid disturbing shorelines colonized by vegetated wetlands to the extent practicable. The dredging activities shall maintain a buffer distance between the toe/bottom of the final dredge slope (i.e., after the slope has stabilized under normal conditions) and vegetated wetlands that is equivalent to four times the final dredging depth (e.g., 20 linear feet for a five-foot dredge depth) to prevent subsidence of these areas. This buffer shall be depicted on project plans when dredging is proposed adjacent to vegetated wetlands.

b) Repair and Maintenance Activities:

The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. Maintenance activities generally do not require compensatory mitigation. For all losses of waters of the United States that require a Category B review associated with maintenance activities, the Corps may require compensatory mitigation, such as wetland restoration or stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

b(1) General Maintenance:

This activity authorizes discharges of dredged or fill material for the repair, rehabilitation, or replacement of any currently serviceable structure or fill that was previously authorized or did not require a permit at the time it was constructed, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for the structure or fill in the original permit or the most recently authorized modification. This activity authorizes minor deviations in the configuration of the structure or filled area, including changes in materials, construction techniques, requirements of other regulatory agencies, current construction codes, or safety standards that are necessary to the repair, rehabilitation, or replacement, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. This activity also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. Currently serviceable means that the structure or fill is usable in its current condition, or with some maintenance, but not so degraded as to essentially require reconstruction.

This activity also authorizes the removal of accumulated sediments and debris within, in the immediate vicinity of, and outside the immediate vicinity of, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). This activity does not apply to new stream restoration projects. This activity also authorizes repair, rehabilitation, or replacement in-kind of structures or fills destroyed or damaged by storms, floods, fire, or other discrete events. This activity also authorizes maintenance activities for the discharge of grout paving material associated with repairs to degraded pipe and box culverts. This activity authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to temporary stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) The total temporary (i.e., construction impacts including stream diversion devices, construction mats, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed one (1) acre (43,560 square feet) including no more than 1,000 linear feet of streams, rivers, and other open waters. Of this overall one (1) acre impact limit, no more than 10,000 square feet of waters of the United States and/or 500 linear feet of stream may be permanent impacts.

(iii) The removal of accumulated sediment and debris is limited to the

minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built but cannot extend any further than 200 linear feet in any direction from the structure. Removal of accumulated sediments and debris outside the immediate vicinity of an existing structure (e.g., bridges, culverted road crossings, water intake structures, etc.) are not authorized under Category A and must be reviewed by the Corps under a Category B.

(iv) Impacts to SAV (documented to exist in the last five years as specified in Section III) are not authorized under Category A.

(v) During the period March 16 through November 30, dredging within tidal waters in depths greater than -3 feet mean low water must be conducted behind turbidity curtains or other exclusion structure that would prevent aquatic animals from entering the dredge footprint. Dredging activities that would occur in this time period without the use of turbidity curtains or other exclusion devices must be reviewed under Category B or an alternate Corps permit review process.

(vi) General maintenance activities where more than 1 permanent culvert is proposed to be installed at a single location (side by side) within a perennial non- tidal stream channel are not authorized and must be reviewed on a project-specific basis under a Category B or an alternate Corps permit review process. (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 Category A.

(vii) All tide gate replacements where a self-regulating tide gate is not being proposed are not authorized and must be reviewed on a project-specific basis under a Category B or an alternate Corps permit review process.

(viii) Blasting or other forms of uncontained in- water demolition must be reviewed on a project-specific basis under a Category B or an alternate Corps permit review process.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) Removal of accumulated sediments and debris must not extend any further than 500 linear feet in any direction from the structure, unless the Corps waives this criterion by making a written determination concluding that the work will result in no more than minimal adverse environmental effects. The removal of sediment is limited to the minimum necessary to restore the waterway to the approximate dimensions that existed when the structure was built. This 500-foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting

outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures.

(iii) Tide gate replacements: For projects not proposing the use of self-regulating tide gates, the applicant shall demonstrate why it is not practicable to replace the tide gate with self-regulating tide gates and shall also provide documentation that the waterway above the proposed gate does not currently support diadromous fish migrations.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) The application must include information regarding the original design capacities and configurations of the structures and fills (e.g., outfalls, intakes, impoundments, canals, culverts, etc.).

(ii) The repair, rehabilitation, or replacement activity is limited to the original dimensions or configuration, except for minor deviations due to changes in materials, construction techniques, or current construction codes or safety standards. Minor deviations in the configuration of the structure or filled area must not exceed the minimum necessary to make the repair, rehabilitation, or replacement. New bank stabilization measures that were not included in the previously authorized structure or fill would require a separate authorization from the Corps.

(iii) Repair, rehabilitation, or replacement of an existing serviceable structure shall not result in the displacement of in-stream habitats or features important to anadromous, estuarine, and resident fish, such as plunge or scour pools. Work under this activity must not impede the passage of normal or high flows in the waterway and/or must not block or impede the movements of anadromous and resident fish.

(iv) The structure or fill must not be put to uses differing from those uses specified or contemplated for it in the original permit or the most recent authorized modification.

(v) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills destroyed or damaged by storms, floods, fire, or other discrete events must be started or under contract to start within two (2) years of the date that they were damaged or destroyed. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the Corps, provided the permittee can demonstrate funding, contract, or other similar delays.

(vi) Maintenance of existing stormwater management facilities must be performed in accordance with any maintenance plan to restore to the design as originally approved and constructed, which includes limiting excavation to the original contours.

(vii) This activity does not authorize the discharge of dredged or fill material for the purpose of reclaiming land lost through gradual erosion processes.

(viii) This activity does not authorize any maintenance dredging for the primary purpose of navigation, beach restoration, stream restoration, stream relocation, or stream channelization, and/or repair or replacement of bulkheads.

(ix) This activity does not authorize blasting or other forms of uncontained in- water demolition, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(x) All dredged or excavated materials must be deposited and retained in an upland (non- wetland) area, unless otherwise specifically approved by the Corps under separate authorization.

(xi) For utility line projects completed by horizontal directional drilling or boring methods that require an application submittal, a remediation plan to address, to the extent that a Department of the Army authorization is required, any anticipated temporary structures, fills or work within waters of the United States necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures. If an inadvertent return occurs, and the remediation requires work within waters of the United States that extends beyond the limits of work authorized by the originally approved remediation plan, then the permittee must notify the Corps immediately and submit a revised remediation plan as soon as possible. The remediation plan must include a detailed narrative of methods to contain and remediate impacts associated with inadvertent returns of drilling fluids, information on equipment kept on site to handle inadvertent returns, and coordination procedures with the Corps and MDE in the event of inadvertent returns of drilling fluids.

b(2) Armoring Bridges, Causeways, and Culverts:

This activity authorizes discharges of dredged or fill material associated with armoring or strengthening of bridges, causeways, and culverts, including excavation to construct a toe for placement of armoring for the purpose of protecting any previously authorized, currently serviceable bridge, causeway, or culvert. Any bank stabilization measures not directly associated with the structure will require a separate Corps authorization. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, and are not to exceed 10,000 square feet including no more than 500 linear feet of streams, rivers, and other open waters.

(ii) Discharges must not extend any further than 200 linear feet in any direction from the structure.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss of tidal and nontidal waters of the United States, to include stream channel, wetlands, and open waters.

(ii) Armoring must not extend any further than 500 linear feet in any direction from the structure.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) The armoring must be the minimum necessary to protect the structure or to ensure the safety of the structure.

(iii) This activity does not authorize stream channelization or stream relocation projects.

(iv) This activity does not authorize the construction of any dams or dikes, unless used for temporary dewatering.

(v) Material used (in order of preference) must be clean stone, broken concrete, or grout bags. If broken concrete is used for armoring, it must be clean and free of rebar or other protruding reinforcement.

(vi) This activity does not authorize dredging for the primary purpose of navigation.

(vii) The armoring material must not extend into a marked, lighted, charted, or federal navigation channel.

(viii) The activity is limited to the minimum necessary to protect the structure or to ensure the safety of the structure.

(ix) The following conditions are applicable to perennial and

intermittent Coastal Plain Streams (tidal and nontidal) in Maryland, and perennial and intermittent Piedmont streams in Cecil and Harford Counties:

(a) Armoring and/or scour protection for bridges, arches, and culverts shall provide a low flow channel that will pass anadromous fish during the spring migratory season (February 15 - June 15). The low flow channels shall provide a flow depth not less than 12 inches, and never less than 8 inches during the spring migratory period. For armoring culverts of diameter equal to or less than 36 inches, flow depth in the low flow channel shall be comparable to depths in adjacent, undisturbed reaches of stream. Flow velocities in the low flow channel should also be comparable to flows in adjacent, undisturbed reaches of stream, as experienced during the spring migratory season. For projects where on-site conditions (e.g., design of the existing culvert or other crossing structure) limit the ability to construct a low flow channel with the latter specifications, the applicant shall submit a narrative, along with their application, documenting site conditions and limitations that prohibit compliance with these low flow channel specifications.

(b) Armoring and/or scour protection for bridges, arches, and culverts that cannot be constructed with low flow channels in accordance with the requirements in (a) above, are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

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

This activity authorizes the repair or replacement of deteriorating or damaged bulkheads or other forms of vertical walls which are still currently functional. This activity also authorizes the placement of riprap along the base of a replacement or existing bulkhead or other forms of vertical walls and associated excavation for the purpose of toe protection (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) The bulkhead repair or replacement, when using wood or corrugated sheeting, must not extend more than 18 inches channelward of the existing structure as measured from the channelward edge of the existing bulkhead piling to the inner-most face of the proposed bulkhead sheeting.

(iii) Discharges associated with the repair or replacement of a bulkhead must not exceed an average of one (1) cubic yard per running foot placed along the bank below the plane of the mean high-water mark.

(iv) Stone toe protection placed along the base of a replacement or existing bulkhead must not extend more than ten (10) feet channelward of the bulkhead.

(v) No discharge of dredged or fill material may be placed into vegetated wetlands or SAV (documented to exist in the last five years as specified in Section III).

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) The bulkhead repair or replacement, when using wood or corrugated sheeting must not extend more than three (3) feet channelward of the existing structure, as measured from the channelward edge of the existing bulkhead piling to the inner-most face of the proposed bulkhead sheeting, unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects.

(iii) Stone toe protection placed along the base of a replacement or existing bulkhead must not extend more than ten (10) feet channelward of the bulkhead or the minimum necessary to provide adequate stabilization.

(iv) Impacts to waters of the United States are not to exceed 10,000 square feet.

(v) The total amount of special aquatic sites which may be filled or excavated/dredged, in square feet, must not exceed the length of the bulkhead repair along the shoreline in linear feet (e.g., 100 square feet maximum for a 100- foot-long bulkhead), unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects.

(vi) This activity does not authorize the filling of wetlands behind free-standing bulkheads that have never been backfilled.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) No material may be placed in excess of the minimum needed for erosion protection.

(ii) The linear length of the replacement bulkhead/wall may not extend along the shoreline beyond the ends of the existing bulkhead/wall.

(iii) The existing bulkhead/wall must be functional.

(iv) Any stone used for toe protection must be clean and free of toxins.

(v) Other natural methods of shoreline stabilization such as living shorelines should be considered if practical.

b(4) Maintenance of Existing Drainage Ditches:

This activity authorizes maintenance sediment and debris removal, not otherwise exempt, of existing, currently serviceable tidally influenced man-made drainage and irrigation ditches and their outlets for the purposes of mosquito control or to maintain drainage from upland areas for the purposes of stormwater management. This activity also authorizes temporary structures, work, and discharges of dredged or fill material into tidal waters of the United States necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Section 10 and/or 404; limited to all tidal waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 10,000 square feet including no more than 500 linear feet of drainage ditch being maintained.

(iii) Permanent and temporary impacts in SAV is not authorized by Category A and requires review under Category B of the MDSPGP-7 or an alternate Corps permit.

(iv) Excavated material may be placed on existing upland ditch banks/berms or disposed of at an approved upland disposal site. Placement of the excavated materials into waters of the United States, including wetlands, is not authorized by Category A MDSPGP. A discharge of dredged or fill material into waters of the United States, including wetlands, requires review under Category B process of the MDSPGP-7 or an alternate Corps permit.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) The single and complete project will result in no more than a total 0.5-acre loss of waters of the United States, to include stream channels, wetlands, and open waters.

(iii) Excavated material must be placed in an upland disposal site, unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse

environmental effects.

(iv) If placement of the excavated/dredged material in uplands is not practicable, then it may be placed in adjacent wetlands in a manner that does not impede the reach and flow of water in the system. Placement of the excavated materials in waters of the United States, including wetlands, must be placed in a manner to minimize disturbance to adjacent wetlands. Placement methods include spreading the material as thinly and evenly as possible on the wetland surface and grading the material as low as possible without undue disturbance to the nearby vegetated wetland or placing the material in unvegetated mosquito-breeding low pockets. Excavated material shall be feathered into existing grade on alternating sides of the ditch as site-specific conditions allow and so as not to impede lateral flow.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) This activity authorizes work only in ditches and their outlets that are subject to the ebb and flow of the tide.

(ii) This activity does not authorize stationing equipment in the ditch. Work shall be done from the bank or road crossing using the appropriate equipment, such as an excavator arm, rotary ditcher, or boom.

(iii) The maintenance must not enlarge or change the length, width, depth, or shape of the ditch from its original design dimensions and configurations. Maintenance cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the tidal ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States).

(iv) This activity does not authorize the relocation or realignment of existing drainage or irrigation ditches constructed in waters of the United States. The location of the centerline of the tidal ditch must be approximately the same as the location of the centerline of the original design.

(v) This activity does not authorize construction of new ditches, new stream channelization or stream relocation projects.

(vi) Excavated material must be properly contained and stabilized and placed where the material: (1) will not wash back into the ditch; (2) will not adversely impact the function of the natural floodplain; and (3) will not create a restriction or impediment to the movement of aquatic species indigenous to the water, or to the passage of normal or expected high flows and tidal exchanges.

(vii) The proposed maintenance activities must not exceed the depth of the connecting waterway.

Note**:** Some discharges of dredged or fill material into nontidal waters of the United States regulated under Section 404 of the CWA for ditch maintenance activities may qualify for an exemption under Section 404(f) of the CWA (see 33 CFR 323.4). This activity authorizes the maintenance of drainage ditches that do not qualify for the Clean Water Act Section 404(f) exemption.

c) Underground And Overhead Utility Line Activities:

The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

c(1) Utility Lines:

This activity authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, repair, and removal of utility lines, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines. There must be no change in pre-construction contours of waters of the United States. A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance. Utility lines also include any cable, line, or wire for the transmission of electricity, telephone and telegraph messages, radio, television, or other communication. The term “utility line” does not include activities which drain a water of the United States, such as drainage tile, or French drains. Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances (i.e., sewage, etc.) over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the United States Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a Section 404 permit. (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits And Requirements:

(i) The total temporary impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, all utility line activities, including access roads, constructed, or installed in, over, or under navigable waters of the United States, including navigable nontidal Section 10 waters, and all tidal wetlands, require review under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) The utility line must make a perpendicular crossing of any stream channel, except for instances where the existing on-site conditions would require a diagonal crossing of the waterway.

(v) Open-cut pipeline installation within wetlands adjacent to a stream must not parallel a stream channel for more than 100 feet along the ordinary high-water mark.

(vi) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed and generally does not require any riprap protection in-stream. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(b) Category B Impact Limits and Requirements:

(i) This activity does not authorize any losses of waters of the United States. Temporary impacts must be reduced to the maximum extent practicable.

(ii) Copies of the application and permit verification will be sent by the Corps where the proposed utility line is constructed, installed, or maintained in, under, or over navigable waters of the United States to the National Oceanic and Atmospheric Administration (NOAA) and National Ocean Service (NOS), for charting the utility line to protect navigation.

(iii) As built drawings: Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline crossing a navigable water of the United States (Section 10 waters), the permittee must furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plan coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of the survey or depicting the elevations and alignment of the buried cable or pipeline crossing the navigable waterway (Section 10 waters).

(iv) When the Corps permit authorizes aerial transmission lines and submerged cables and pipelines as well as artificial reefs and structures on the Outer Continental Shelf, the applicant must notify NOS of authorization within two weeks before beginning work and upon completion of the activity authorized by this permit. Your notification of completion must include a drawing which certifies the location and

configuration of the completed activity (a certified permit drawing may be used). Notifications to NOS will be sent to the following email address (oceanservicepress@noaa.gov).

(v) For all submerged utility lines crossing navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of any federal navigation channel shall be shown in relation to the proposed utility line.

(vi) For aerial electric power transmission lines crossing navigable waters of the United States, the minimum clearances listed under General Condition 7 must be followed (33 CFR 322.5(i)).

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) There must be no change in pre-construction contours of waters of the United States.

(iii) Horizontal directional drilling, jack and bore, missile, or similar methods shall be reviewed as an option where feasible.

(iv) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside wetlands and forested tracts or on the edges of wetlands and forested tracts where feasible.

(v) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(vi) For energy production and transmission projects involving tall structures such as wind turbines, solar power towers, overhead electrical transmission utility and power lines and other energy systems including geothermal and solar panels coordination with the Department of Defense (DoD) Military siting clearing house. Prior to the approval of the application, permittees must submit the Informal Review Response Letter from the DoD military siting clearinghouse ((32 CFR 211.8) https://www.dodclearinghouse.osd.mil/Project-Review/) to the reviewing agencies.

(vii) In wetlands, the top six (6) to 12 inches of the trench must be backfilled with the top six (6) to 12 inches of topsoil removed from the trench.

(viii) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the authorized activity is completed.

(ix) When mechanized land clearing results in the permanent conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation may be required to offset the adverse effects of the project. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of dredged or fill material.

(x) For utility line projects completed by horizontal directional drilling or boring methods that require an application submittal, a remediation plan to address, to the extent that a Department of the Army authorization is required, any anticipated temporary structures, fills or work within waters of the United States necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures, should be included in application. If an inadvertent return occurs, and the remediation requires work within waters of the United States that extends beyond the limits of work authorized by the originally approved remediation plan, then the permittee must notify the Corps immediately and submit a revised remediation plan as soon as possible. The remediation plan must include a detailed narrative of methods to contain and remediate impacts associated with inadvertent returns of drilling fluids, information on equipment kept on site to handle inadvertent returns, and coordination procedures with the Corps and MDE in the event of inadvertent returns of drilling fluids.

c(2) Foundations for Overhead Utility Line Towers, Poles, Anchors, and Minor Attendant Features for Subsurface Utility Lines:

This activity authorizes the construction or maintenance of foundations, towers, poles, and anchors for above-ground utility lines and minor attendant features for subsurface utility lines in all waters of the United States, provided the foundations and attendant features are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible. Minor attendant features for subsurface utility lines must be necessary for the use and maintenance of the utility line and include manholes, fire hydrants, valves, and other minor fixtures. (Section 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, or tidal wetlands. All utility line activities, including access roads constructed or installed in, over, or under navigable waters of the United States, including navigable nontidal Section 10 waters of the United States, and all tidal wetlands, require review under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Overhead utility line towers, poles, and anchors must not be located within channels of nontidal streams (below the ordinary high-water line) to avoid adverse effects on the morphometry of the stream channel.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(ii) Where the proposed work is constructed, installed, or maintained in, over or under navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps to the NOAA, NOS, for charting the utility line to protect navigation.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing the utility project outside wetlands and forested tracts or on the edges of wetlands and forested tracts where possible.

(iii) For energy production and transmission projects involving tall structures such as wind turbines, solar power towers, overhead electrical transmission utility and power lines and other energy systems including geothermal and solar panels coordination with the DoD Military siting clearing house is required. Prior to the approval of the application, permittees must submit the Informal Review Response Letter from the DoD military siting clearinghouse (https://www.dodclearinghouse.osd.mil/Project-Review/) to the reviewing agencies.

(iv) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(v) Foundations shall be the minimum size necessary and shall be separate footings for each tower leg (rather than a larger single pad), where feasible.

c(3) Utility Access Roads:

This activity authorizes the mechanized land clearing and construction of access roads for the construction and maintenance of utility lines, including overhead power lines. (Sections 10 and/or 404, all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States due to construction of all access roads associated with construction of the utility line are not to exceed 5,000 square feet including no more than 200 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, tidal wetlands, or nontidal wetlands adjacent to tidal waters. All utility line activities, including access roads constructed or installed in, over, or under navigable waters of the United States, tidal waters, or in nontidal wetlands adjacent to tidal waters, require review Category B or alternate Corps permit review procedures, as appropriate.

(iii) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(ii) Where the proposed access road is constructed, installed, or maintained in or over navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps, when appropriate, to the NOAA, NOS, for charting the access road to protect navigation.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of the MDSPGP-7 activity. Access roads solely used for construction of the utility line must be removed upon completion of the work, in accordance with the requirements of temporary fills (see General Condition 31).

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines and access roads outside wetlands and forested tracts or on the edges of wetlands and forested tracts, where possible.

(iv) Exposed slopes and stream banks must be stabilized and revegetated, with native, woody species, immediately after construction of the utility line is completed.

(v) All temporary and permanent road crossings must be the minimum width necessary for the crossing. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to preconstruction contours and elevations (e.g., at grade contour roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

(vi) When mechanized land clearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation may be required to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see General Condition 29). This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.

c(4) Utility Substations:

This activity authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in nontidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 0.5 acre of waters of the United States. This activity includes substation facilities associated with electric utility lines serving as a junction point between electric generation and electricity distribution. Substation facilities for utility lines for water and other substances can include pump plants and siphons. Examples of substations associated with oil or natural gas pipelines may include oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations and pressure regulating stations. This activity may be used to authorize discharges of dredged or fill material into nontidal waters of the United States for above-ground natural gas facilities including district regulators and gate stations. This activity does not authorize discharges of dredged or fill material into nontidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities. (Section 404, limited to nontidal waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to waters of the

United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet including no more than 200 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899 or nontidal wetlands adjacent to tidal waters. Such project must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project, in combination with all other activities included in one single and complete project, will result in no more than a total 0.5-acre loss to nontidal waters of the United States, to include nontidal stream channel, wetlands, and other nontidal open waters.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity authorizes work only in nontidal wetlands, streams, rivers, and other nontidal open waters.

(iii) For energy production and transmission projects involving tall structures such as wind turbines, solar power towers, overhead electrical transmission utility and power lines and other energy systems including geothermal and solar panels, coordination with the DoD Military siting clearinghouse is required. Prior to the approval of the application, permittees must submit the Informal Review Response Letter from the DoD military siting clearinghouse ((32 CFR 211.8) https://www.dodclearinghouse.osd.mil/Project-Review/) to the reviewing agencies.

d) Linear Transportation Activities:

This activity authorizes discharges of dredged or fill material into waters of the United States and structure or work in navigable waters required for the construction, expansion, modification, or improvement of temporary and permanent linear transportation projects (e.g., roads, highways, railways, trails, airport runways, driveways, taxiways, etc.). This activity cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers. (Sections 10 and/or 404; all waters of the United States). *Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).*

New crossings of all waters of the United States should be designed and constructed

based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation and justification is required to deviate from the order of preference.

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 5,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity can authorize multiple road crossings provided that the total temporary and permanent impact of all of the crossings meets the 5,000 square feet and 200 linear feet impact limit.

(iii) This Category A activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, tidal wetlands, or in nontidal wetlands adjacent to tidal waters. Category B or alternate Corps permit review procedure is required.

(iv) Category B or alternate Corps permit review procedures are required for stream relocation projects that do not propose nature-based techniques such as bioengineering and vegetative stabilization to relocate impacted streams.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than 0.5-acre loss of tidal and nontidal waters of the United States.

(ii) Where the proposed work is constructed or installed in navigable waters of the United States, copies of the application and MDSPGP-7 verification will be sent by the Corps to the NOAA, NOS, for charting the crossing to protect navigation.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) The width of the fill must be limited to the minimum necessary for the crossing.

(iii) The crossing must not be used as a berm for a permanent impoundment.

(iv) Exposed slopes and stream banks must be stabilized and

revegetated, with native, woody species, immediately after construction of the road crossing is completed.

(v) Stream relocation using nature-based techniques and establishment of previously existing aquatic resource functions in the new stream channel is generally considered to be self-mitigating.

(vi) If not using the preferred crossing options such as use of a bridge or bottomless arch, the applicant must provide a narrative with their joint permit application that documents the measures evaluated to minimize impacts to waters of the United States, as well as specific documentation concerning site conditions and limitations on utilizing the preferred options including cost, and engineering factors and site-specific limiting factors. This documentation must also include photographs documenting site conditions.

e) Fill Activities:

The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

e(1) Minor Nontidal Fills:

This activity authorizes discharges of dredged or fill material in nontidal wetlands and nontidal streams. (Sections 10 and/or 404; limited to all nontidal waters).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in nontidal navigable waters under Section 10 of the Rivers and Harbors Act of 1899. Category B or alternate Corps permit review procedure is required.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to nontidal waters of the United States.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity authorizes work only in nontidal wetlands, streams, rivers, and other nontidal open waters.

(iii) This activity does not authorize types of work for which there are other, more specific Category A/B activities, such as Linear Transportation Activities, Utility Lines, etc.

(iv) This activity does not authorize the construction of stream restoration projects, mitigation banks, in-lieu fee mitigation projects, or stream diversions.

(v) This activity does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, weirs, dams, water withdrawals, or water diversions. This activity also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. It does authorize impacts for the purpose of enhancing farmed wetlands located in agriculture fields or restoring or enhancing hydrology to a prior-converted wetland.

(vi) For energy production and transmission projects involving tall structures such as wind turbines, solar power towers, overhead electrical transmission utility and power lines and other energy systems including geothermal and solar panels coordination with the DoD Military siting clearing house. Prior to the approval of the application, permittees must submit the Informal Review Response Letter from the DoD military siting clearinghouse (https://www.dodclearinghouse.osd.mil/Project-Review/) to the reviewing agencies.

e(2) Agricultural Activities:

This activity authorizes discharges of dredged or fill material into nontidal waters of the United States for the purpose of improving agricultural production, including construction of building pads for farm buildings, and construction of tide gates designed to prevent the encroachment of salt water into agricultural drainage ditches. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land-clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in non-tidal waters of the United States; and similar activities. This activity does not authorize construction of farm ponds or aquaculture ponds in nontidal streams (Section 404; limited to all nontidal waters). *Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This activity may authorize those regulated agricultural activities that do not qualify for the Clean Water Act Section 404(f)(1) exemptions because of the recapture provision at Section 404(f)(2).*

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes wetlands, streams, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity does not authorize discharges into nontidal wetlands adjacent to tidal waters. Such projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to nontidal waters of the United States.

(ii) This activity does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in nontidal streams.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) For discharges into waters of the United States to improve agricultural production, if the permittee is a United States Department of Agriculture program participant, they must: (a) obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended; (b) have a wetland delineation; and (c) implement an NRCS-approved compensatory mitigation plan that fully offsets losses of waters of the United States, if required.

(iii) For discharges into waters of the United States to improve agricultural production, if the permittee is not a United States Department of Agriculture program participant, the permittee shall submit a compensatory mitigation statement describing how the mitigation requirement will be satisfied or explain why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required.

(iv) This activity does not authorize any work in perennial streams.

(v) Some discharges for agricultural activities may qualify for associated with agricultural activities when the discharge an exemption under Section 404(f) of the CWA, as described in DA regulations at 33 CFR 323.4.

(vi) For the construction of building pads for farm buildings, only wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) may be impacted.

(vii) Tide gates must be placed as close as possible to the affected agricultural field.

(viii) This activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, tidal waters, or tidal wetlands.

e(3) Soil Investigations, Scientific Measurement Devices, and Survey Activities:

This activity authorizes discharges of dredged or fill material for soil investigations and survey activities. Authorized survey activities include core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory type bore holes, exploratory trenching, soil survey and sampling, sample plots or transects for wetland delineations, percolation tests for sewage disposal fields, survey markers or survey monuments, piezometers and groundwater monitoring devices, and historic resources surveys.

For purposes of this activity, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material. In addition, this activity authorizes discharges of dredged or fill material associated with devices whose purpose is to measure and record scientific data, such as staff gauges, tide and current gauges, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. This activity does not authorize any permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas exploration. Fill placed for roads and other similar activities is not authorized by this activity. Temporary road crossings shall be reviewed under Section IV.B.1.e(7), Temporary Construction

Access, Stream Diversion, and Dewatering. The discharge of drilling mud and cuttings may require a permit under Section 402 of the CWA (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other open waters.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 10 cubic yards.

(iv)This Category A activity does not authorize seismic activities. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(v) This Category A activity authorizes discharges and structures associated with archaeological surveys, within the Category A impact threshold, but does not authorize discharges and structures associated with the recovery of historic resources. Regulated activities associated with the recovery of historic resources must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards.

(iv) Seismic activities must not produce noise levels above 160dB re 1µPa within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries for the protection of listed species.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) This activity does not authorize drilling and the discharge of excavated material from test wells for oil and gas exploration. This activity does authorize plugging these wells.

(ii) This activity does not authorize discharges of dredged or fill material placed for roads, pads, and other similar structures and activities.

(iii) This activity does not authorize any permanent structures, except survey markers or monuments.

(iv) The area in which any exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain waters of the United States. The top 6 to 12 inches of the trench shall be backfilled with topsoil from the trench.

(v) Upon completion of the study, any measuring device and any

other associated features supporting the device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to the pre-construction elevations and revegetated with native species.

e(4) Dry Fire Hydrants:

This activity authorizes discharges of dredged or fill material associated with installation and maintenance of dry hydrants. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet.

(ii) Up to 25 cubic yards of sediment may be removed from the hydrant intake.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) The dry hydrants must be installed for the purpose of providing water for firefighting.

(iii) This activity does not authorize sediment removal from wetlands or SAV (documented to exist in the last five years as specified in Section III).

e(5) Clearing Debris and Windfalls:

This activity authorizes discharges of dredged or fill material associated with removal of debris and windfalls from shorelines and banks. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction

matting. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other open waters.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(ii) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) This activity does not allow for stationing equipment in-stream. Work shall be done from the bank or road crossing using the appropriate equipment, such as an excavator arm or boom.

(ii) This activity does not authorize dredging, shoal removal, or riverbank snagging.

(iii) This activity authorizes temporary access roads but does not authorize the construction of permanent access roads.

(iv) The activity must not block or impede the movements of anadromous or resident fish species. 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. The width of temporary fill must be limited to the minimum necessary for temporary construction access. Work shall be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

e(6) Reserved:

e(7) Temporary Construction, Access, Stream Diversions, and Dewatering for Construction:

This activity authorizes temporary structures, work, and discharges of dredged or fill material, including stream diversion devices necessary for construction activities or repair, or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps or the USCG, or for other construction activities not subject to the Corps or USCG regulations (Sections 10 and/or 404; all waters of the United States). Note that certain appropriate individual activities of this MDSPGP-7 include the authorization of these temporary construction impacts.

(a) Category A Impact Limits and Requirements:

(i) The total temporary impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet of waters of the United States including no more than 200 linear feet of streams, rivers, and other open waters. The entire length of any diverted stream from the start to the endpoint of the diversion is considered impacted. (See Definitions Section for "Linear Footage of Stream Impact").

(ii) Discharges into tidal wetlands and waters associated with temporary causeways, approach fills (except for construction mats), and cofferdams are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iii) The use of dredged material must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) Category B Impact Limits and Requirements:

(i) An application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use.

(iii) The width of the fill must be limited to the minimum necessary for the temporary road crossing.

(iv) This activity does not authorize structures or fill left in place after

construction is completed. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States (see 33 CFR part 322).

(v) Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be removed to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated.

e(8) Outfall Structures And Associated Intake Structures:

This activity authorizes structures, work, and discharges of dredged or fill material associated with the construction or modification of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the CWA). This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. The construction of intake structures is not authorized by this activity unless they are directly associated with an authorized outfall structure. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other open waters.

(ii) This Category A activity does not authorize intake structures.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to tidal and nontidal waters of the United States.

(ii) In order to minimize the effects of intakes on anadromous fish eggs and larvae, and oyster larvae, intake structures shall be equipped with screening (with mesh size no larger than 1 mm) of wedge wire or another material of equal or better performance. Where feasible, intakes should be located away from spawning or nursery grounds, to minimize the impingement on, or entrainment of, eggs or larvae. In addition, intake velocities should not exceed 0.5 ft./sec.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Discharges leaving outfall structures must not have erosive flows.

e(9) Residential, Commercial, Institutional Development Activities and Recreational Facilities:

This activity authorizes the discharges of dredged or fill material into nontidal waters of the United States associated with residential, commercial, and institutional development activities, including the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for construction activities including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, sidewalks, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, trails, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include a single residence, multiple and single unit developments, and/or a residential subdivision. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, libraries, hospitals, places of worship, and municipal buildings (e.g., fire and police department buildings, judicial buildings, public works buildings, government office buildings, etc.). The construction of new golf courses (unless an integral part of a residential development), new ski areas, or oil and gas wells are not authorized by this activity. (Sections 10 and/or 404, limited to all nontidal waters).

New crossings of all waters of the United States should be designed and constructed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation and justification is required to deviate from the order of preference.

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 5,000 square feet of waters of the United States including no more than 200 linear feet of nontidal streams, rivers, or other open waters.

(ii) Category A does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, weirs, dams, water withdrawals, or water diversions. It also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. Category B or alternate Corps permit review procedures are required for construction of such ponds or stormwater management facilities.

(iii) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) Open-cut utility installation within adjacent jurisdictional wetlands must not parallel a stream channel for more than 100 feet along the ordinary high-water mark.

(v) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(vi) This Category A activity does not authorize work under Section 10 of the Rivers and Harbors Act of 1899 in navigable waters, tidal wetlands, and nontidal wetlands adjacent to tidal waters. Work in tidal waters and wetlands and nontidal wetlands adjacent to tidal waters must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to nontidal waters of the United States.

(ii) For all submerged utility lines across nontidal navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of any federally authorized navigation channel shall be shown in relation to the proposed utility line.

(iii) As built drawings: Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (Section 10 waters), the permittee must furnish the Corps and the NOAA, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland 20910, with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plan coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of the survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway (Section 10 waters).

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Directional drilling, jack and bore, missile, or similar methods are the preferred method of installation.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside forested wetlands and forested tracts, or on the edges of forested tracts.

(iv) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(v) For utility lines installed in wetlands, the top six (6) to 12 inches of the trench must be backfilled with the top six (6) to 12 inches of topsoil removed from the trench.

(vi) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(vii) When mechanized land clearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, the permittee shall submit a compensatory mitigation statement describing how the mitigation requirement will be satisfied or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of dredged or fill material. Stream relocation using nature-based techniques and establishment of previously existing aquatic resource functions in the new stream channel is generally considered to be self-mitigating.

(viii) If not using the preferred crossing options such as use of a bridge or bottomless arch, the applicant must provide a narrative with their joint permit application that documents the measures evaluated to minimize impacts to waters of the United States, as well as specific documentation concerning site conditions and limitations on utilizing the preferred options including cost, and engineering factors and site-specific limiting factors. This documentation must also include photographs documenting site conditions.

(ix) For energy production and transmission projects involving tall structures such as wind turbines, solar power towers, overhead electrical transmission utility and power lines and other energy systems including geothermal and solar panels, coordination with the DoD Military siting clearing house is required. Prior to the approval of the application, permittees must submit the Informal Review Response Letter from the DoD military siting clearinghouse (https://www.dodclearinghouse.osd.mil/Project-Review) to the reviewing agencies.

(x) For utility line activities completed by horizontal directional drilling or boring methods that require an application submittal, a remediation plan to address, to the extent that a Department of the Army authorization is required, any anticipated temporary structures, fills or work within waters of the United States necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures. If an inadvertent return occurs, and the remediation requires work within waters of the United States that extends beyond the limits of work authorized by the originally approved remediation plan, then the permittee must notify the Corps immediately and submit a revised remediation plan as soon as possible. The remediation plan must include a detailed narrative of methods to contain and remediate impacts associated with inadvertent returns of drilling fluids, information on equipment kept on site to handle inadvertent returns, and coordination procedures with the Corps and MDE in the event of inadvertent returns of drilling fluids.

e(10) Stormwater Management Facilities:

This activity authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities (i.e., not the retrofit of existing facilities), including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; and the construction of low impact development (LID) integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters, such as features needed to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.. This activity authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for construction activities including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. Retrofits of existing stormwater management facilities may be reviewed under MDSPGP-7 k(1) *Retrofits of Existing Stormwater Management Facilities*, or an individual permit. (Section 404; all nontidal waters).

(a) Category A Impact Limits and Requirements:

(i) Except for maintenance of stormwater management facilities, the total temporary and permanent impacts to nontidal waters of the United States, including nontidal wetlands, streams, and other nontidal open waters, are not to exceed 5,000 square feet including no more than 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in nontidal navigable waters under Section 10 of the Rivers and Harbors Act of 1899. Applications proposing work in applicable navigable waters under Section 10 of the Rivers and Harbors Act must be reviewed under a Category B or alternate Corps permit review procedures, as appropriate.

(iii) This Category A activity does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities or new LID features in Use III or IV (as defined in COMAR Sections 26.08.02.02 and 26.08.02.02-1) streams.

(iv) Maintenance of stormwater management facility activities are eligible for authorization under Category A as long as the activity is limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5 acres of loss to nontidal waters of the United States.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Compensatory mitigation may be required for direct adverse permanent impacts, indirect adverse impacts to waters of the United States, including conversions of aquatic resource types, caused by the discharge of dredged or fill material that exceed 5,000 square feet and/or 200 linear feet of stream.

(iv) This activity cannot be used in combination with other MDSPGP-7 activities.

(v) This activity does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities or new LID features into tidal waters, tidal wetlands, non-tidal wetlands adjacent to tidal waters, and

perennial streams.

e(11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized Under the MDSPGP-7:

This activity authorizes discharges of dredged or fill material in waters of the United States and work in navigable waters of the United States associated with the restoration, enhancement, and establishment of non-tidal and tidal wetlands and riparian areas, including invasive, non-native or nuisance species control; the restoration and enhancement of non-tidal streams and other non-tidal open waters; and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services. The authorized activities must be designed and constructed to satisfy a State of Maryland or federal compensatory mitigation requirement for activities eligible for authorization under this Maryland State Programmatic General Permit-7. (Sections 10 and/or 404; all waters of the United States).

Activities authorized by this activity include:

a. the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitat;

b. the installation, removal and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed;

c. the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure;

d. the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders;

e. the removal of stream barriers, such as undersized culverts, fords, and grade control structures, the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology;

f. the installation of structures or fills necessary to restore or enhance wetland or stream hydrology;

g. the construction of small nesting islands; the construction of open water areas;

h. the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for

seed bed preparation and the planting of appropriate wetland species;

i. the re-establishment of SAV and tidal wetlands in areas where those plant communities previously existed; and

j. the use of mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation, and other related activities. Only native plant species shall be planted at the site.

(a) Category A Limits and Requirements:

(i) This activity authorizes compensatory mitigation activities required to offset unavoidable permanent impacts to waters and wetlands under a Category A MDSPGP-7 authorization.

(ii) Compensatory mitigation activities to offset impacts authorized by a Category B MDSPGP-7 authorization must be reviewed by the Corps under the Category B review procedures or alternative Corps permit review procedures, as appropriate.

(iii) The total temporary and permanent impacts to waters of the United States which includes wetlands, streams, and other open waters, associated with restoration, enhancement, and establishment activities are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other open waters.

(iv) This activity authorizes the relocation of non-tidal wetlands, on the project site provided there are net increases in aquatic resource functions and services.

(v) Except for the relocation of non-tidal wetlands on the project site, this activity does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

(vi) Any tidal control structures (e.g., tide gates) should be designed to be self-regulating and regularly maintained to allow tidal flow and fish passage but can be set to close at a specified water level. For projects not proposing the use of a self-regulating tide control structure, the applicant shall demonstrate why it is not practicable to use a self-regulating tidal control structure, and shall also provide documentation that the waterway above the proposed structure does not currently support diadromous fish migrations.

(vii) This Category A activity does not authorize:

(a) Compensatory mitigation activities proposed in all tidal and nontidal coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland.

(b) Impacts to SAV (documented to exist in the last five years as specified in Section III).

(c) Releases of sediment from reservoirs.

(d) Stream relocations.

(e) New ditching to eliminate mosquito breeding habitat.

(f) Losses of streambed.

(g) Water impoundments.

(h) Discharge of dredged materials for beneficial reuse in tidal areas.

(i) Activities listed as not authorized under (c) below.

(b) Category B Impact Limits and Requirements:

(i) This activity authorizes compensatory mitigation activities required by the Corps and/or MDE to offset permanent impacts to waters and wetlands losses eligible for Category B MDSPGP-7 project authorizations or compensatory mitigation activities required under a MDSPGP-7 authorization that are not eligible for Category A impact limits and requirements above.

(ii) This activity authorizes the relocation of non-tidal waters, including all non- tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

(iii) Sediment releases from reservoirs that have a drainage area of greater than 640 acres, or the height of the pond measured from the upstream toe to the top of dam is 20 feet or have the storage capacity of more than 50 acre-feet more will require testing of sediment size, distribution and potential pollutants based on past upstream land uses and discharges. Testing maybe required on dams smaller than these thresholds in certain circumstances.

(iv) Except for the relocation of non-tidal waters on the project site, this activity does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type or uplands. Changes in wetland plant communities that occur when

wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application required to MDE for Corps authorization.

(ii) This activity does not authorize stream channelization or dam removal activities.

(iii) This activity does not authorize artificial reefs.

(iv) This activity does not authorize activities for development of a compensatory mitigation bank site or an in-lieu fee program site.

(v) This activity does not authorize the relocation of tidal waters or the conversion of tidal waters or tidal wetlands to another aquatic habitat type (i.e., uplands or non-tidal aquatic habitats or open waters).

(vi) The applicant shall include information in the application regarding the presence, absence, or proximity of horned pondweed (*Zannichellia palustris*) within the project site within mesohaline waters (i.e., salinity 5-18 parts per thousand) of the mid and upper Chesapeake Bay. Distribution information of horned pondweed shall require recent ground-truth survey of the area by the applicant (i.e., employing a survey crew with relevant experience) during the period May 1 through June 15, of any year. Horned pondweed is less prevalent or does not occur upstream of the geographical exclusion lines shown on the Low Salinity Waters in Maryland Chesapeake Bay Map Appendix B and in tidal waters of the Maryland Atlantic Coastal Bays. Therefore, documentation regarding the presence or proximity of horned pondweed is not required in these areas. The applicant may request the Corps conduct surveys for horned pondweed; however, this will require a Category B review and may result in significant delays in review timeframes.

(vii) To be authorized by this activity, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of one or more intact aquatic habitats or riparian areas of the same type that exist in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area. The Corps or MDE as applicable must approve of the selection of a reference site, or the conceptual model used to identify reference standards.

(viii) The full suite of aquatic habitat functions and services must be considered when determining whether the net gains in aquatic resource functions

and services required by this activity will occur. There should not be a focus on a specific aquatic resource function, or the ecological service(s) produced from that aquatic resource function. Supporting information must be provided in the application to demonstrate net increases in aquatic resource functions and services. Prospective permittees should consider using a Corps-approved before-and-after functional or conditional assessment protocol. Corps approved stream and wetland functional assessments can be found here: Baltimore District > Missions > Regulatory > Mitigation.

(ix) Permittee must document sufficiently that proposed release of sediments from reservoirs to restore downstream habitat will result in a net ecological gain. Testing of sediment size, distribution and potential adverse impacts and pollutants based on past upstream land uses and discharges shall be conducted to the satisfaction of the Corps, as required.

(x) Shellfish seeding activities, such as the placement of shell material or any other habitat development or enhancement, are restricted to shellfish species that are native to that waterbody.

(xi) The introduction or spread of invasive or other non-native plant or animal species on the project site caused by the authorized work shall be avoided to the maximum extent practicable. For example, construction mats and equipment must be thoroughly cleaned and free of vegetation and soil before and after use. The introduction or spread of invasive plant or animal species on the project site caused by the authorized work must be controlled.

(xii) This activity does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

(xiii) Compensatory mitigation activities authorized by this activity will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-7. For example, if an activity has an acreage limit of 0.5 acre, it cannot be used to authorize any project resulting in impacts 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.

*(xiv) Compensatory mitigation projects provided to offset losses of aquatic resource functions and services must comply with the applicable provisions of 33 CFR Part 332.

f) Shoreline and Stream Bank Stabilization Activities:

The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

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

This activity authorizes structures and discharges of dredged or fill material associated with construction of tidal shoreline erosion control structures and construction/modification of tidal revetments. Examples of shoreline erosion control structures include, but are not limited to, low profile sills, breakwaters, and groins. Bulkheads and living shoreline activities are not authorized under this activity. These activities will be authorized under other specific MDSPGP-7 activities for bulkheads and living shorelines (e.g., b(3), f(2), f(3)), if those activities meet the terms and conditions, including any applicable project-specific conditions. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. (Sections 10 and/or 404; limited to all tidal).

(a) Category A Impact Limits and Requirements:

(i) For tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills, breakwaters, etc.), the proposed work is limited to 500 linear feet in length along the shoreline, total impacts to waters of the United States must not exceed 5,000 square feet, and the proposed work must not extend more than 10 feet channelward of the mean high-water shoreline.

(ii) Work associated with tidal groins must not extend more than 25 feet channelward of the mean high-water shoreline.

(iii) This Category A activity does not authorize discharges of dredged or fill material into special aquatic sites, including intertidal mudflats, wetlands, shellfish beds, and sites that support SAV (documented to exist in the last five years as specified in Section III), or anadromous fish spawning areas.

(iv) Tidal groins must be constructed with vents/windows or as a low-profile structure to minimize impacts to the littoral drift.

(b) Category B Impact Limits and Requirements:

(i) For tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills, breakwaters, etc.), the activity is no more than 2,000 linear feet in length along the shoreline, and the proposed work cannot extend more than 25 feet channelward of the mean high- water shoreline, unless the Corps waives these criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(ii) Work associated with tidal groins must not extend more than

50 feet channelward of the mean high-water shoreline, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(iii) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long revetment).

(iv) The applicant shall submit documentation of shoreline condition at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source.

(v) Clearing and/or pruning of riparian trees and shrubs within the defined project area shall be minimized to the maximum extent practicable.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) No material may be placed in excess of the minimum needed for protection from erosion caused by wind and wave energy.

(iii) This activity does not authorize tidal marsh creation or beach nourishment projects. Tidal marsh creation and beach nourishment projects must be reviewed under Section IV.A.1.f(2), Tidal Marsh Creation/Beach Nourishment or alternate Corps permit review procedures, as appropriate.

(iv) This activity does not authorize the construction of new bulkheads. New bulkhead projects must be reviewed under Section IV.A.1.f(3), New Bulkheads, or alternate Corps permit review procedures, as appropriate.

(v) All structures constructed of stone must be clean and free of toxins.

(vi) The activity must be constructed as close to the uplands and/or bank as structurally feasible.

(vii) This activity does not authorize reclaiming eroded land.

(viii) No material must be of the size or type, or placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area.

(ix) Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(x) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(xi) Any revetment or tidal shoreline erosion control structure must be constructed parallel to the uplands, other than groins and returns on stone sills.

(xii) The tidal groin must be constructed with vents/windows or as a low-profile structure so as to minimize impacts to the littoral drift.

(xiii) Written documentation must be required to support the preferred stabilization method.

(xiv) Grain size analyses for both the dredged/fill material and the placement site are required. The discharged material must be equal to or larger in grain size and character than the existing beach material or determined otherwise to be compatible with existing site conditions. The discharged material may not contain more than 10 percent silts and clays, or control measures such as breakwaters, groins or similar structures should be used to control movement. If the activity requires the beneficial reuse of dredge material, see General Condition 40.

f(2) Living Shorelines/Beach Nourishment:

This activity authorizes discharges of fill material and associated shoreline protection structures, including but not limited to, groins, wave screens, low profile stone sills, oyster reef sills, small geo-tubes, and coir logs, in subtidal and intertidal waters and tidal wetland along tidal shorelines for the construction and maintenance of living shorelines and/or beach nourishment for the purpose of shoreline erosion control only. A living shoreline has a footprint that is made up mostly of native material. Living shorelines incorporate vegetation or other living, natural “soft” elements along or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection or stability. Living shorelines should maintain the natural continuity of the land-water interface and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal fringe wetlands or oyster or mussel reef structures. Structures used to protect living shorelines should follow an order of preference that utilizes a small impact footprint. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and/or 404; limited to all tidal waters).

(a) Category A Impact Limits and Requirements:

(i) Total impact is limited to 17,500 square feet of tidal waters of the United States.

(ii) The fill and containment structures must not extend more than 500 linear feet in length and/or 35 feet channelward of mean high water.

(iii) No impacts to SAV (documented to exist in the last five years as specified in Section III) are authorized.

(iv) The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed 1 square foot per linear foot of the activity along the shoreline. All impacts to sub-tidal, inter-tidal, and/or existing wetland vegetation may require wetland planting, monitoring, adaptive management, and invasive species plans and must result in no net loss of vegetated wetlands.

(v) This Category A activity does not authorize any discharge of dredged or fill materials for the purpose of constructing any type of compensatory mitigation, including mitigation banks, in lieu fee mitigation, and permittee-responsible mitigation.

(vi) Projects involving breakwater structures must be reviewed as a Category B.

(vii) If stone sills are deemed appropriate for the project site, after consideration of other alternatives, their placement at the toe of constructed marsh shall be designed to facilitate ingress/egress of estuarine fauna during regular tidal cycles. The following example sill design parameters are acceptable measures to meet this condition:

(a) Low profile sills, particularly for low to moderate erosion energy shorelines.

(b) Sill windows/vents of sufficient width (at least 10-15 feet across the bottom), placed in sufficient number along the sill length, or at sill termini (e.g., one window for every 100 feet of sill); and

(c) Sill window/vent designs may include (a) sill windows left as natural substrate at the existing elevation (b) sill windows lined with cobble placed no higher than is necessary to control erosion and no higher than the MLW elevation; or (c) off-set or staggered sills. This activity does not authorize additional material placed in stone sill windows in projects in low energy (e.g., max fetch <1 mile) conditions.

(viii) The fill material used must be clean substrate, no more than 10% of which shall pass through a standard number 100 sieve.

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to tidal waters of the United States, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(ii) The fill and channelward toe of containment structures must not extend more than 50 feet channelward of mean high water, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(iii) Activities in SAV (documented to exist in the last five years as specified in Section III) beds must be avoided and minimized. Avoidance and minimization measures, such as relocating, reconfiguring, or eliminating a structure and/or the implementation of a time-of-year restriction for work in waters, may be required to reduce impacts to the SAV habitat. Unavoidable impacts may require compensatory mitigation.

(iv) This Category B activity authorizes the discharge of both dredged and fill materials.

(v) Grain size analyses for both the dredged/fill material and placement site are required. The discharged material must be equal to or larger in grain size and character than the existing beach material or determined otherwise to be compatible with existing site conditions. The discharged material may not contain more than 10 percent silts and clays, or control measures such as breakwaters, groins or similar structures should be used to control movement. If the activity requires the beneficial reuse material, see General Condition 40.

(vi) Ecologically beneficial, existing tidal wetlands should be incorporated into the design of Living Shorelines. If incorporating existing tidal wetlands on-site does not provide the desired ecological uplift, existing wetlands on-site may be impacted, but shall be replaced on-site with the same size and planted with similar species as the previously existing wetlands. The conversion of low marsh to high marsh is typically undesirable as these habitats perform different ecological functions and services; however, there are certain cases where conversion from low marsh to high marsh could be ecologically beneficial. Written documentation is required to justify the ecological benefits of converting low marsh to high marsh if proposed.

(vii) The permittee must complete Marsh Monitoring Reports in compliance with MDE's Marsh Maintenance Plan, including documenting areal coverage as required in condition (c)(iv) below. A copy of the monitoring reports must be provided to the Corps Baltimore District Office via email to nab-regulatory@usace.army.mil with the subject line of "NAB-20XX-XXXXX (PROJECT NAME)" no later than December 31 of any year for which monitoring is required.

(viii) If the authorized project is failing to achieve required success

criteria as discovered through monitoring activities or routine site inspection, the permittee must provide the Corps with a detailed explanation of the deficiency/ies, identify the specific remedial action(s) proposed to be taken for each identified deficiency, and include a timetable for implementing work to correct the deficiency/ies. Final remedial measures, as approved by the Corps, must be completed. Additional monitoring or mitigation may be required if, after five years, the living shoreline project has not achieved the project objectives and required success criteria.

(ix) Failure to address any deficiency/ies in a timely manner may result in a non-compliance action by the Corps.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) The living shoreline must be planted as soon as practicable, within one year, following completion of the filling operation. Native plants appropriate for current site conditions, including salinity, must be used.

(iii) The applicant must submit documentation of on-going shoreline erosion at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source

(iv) Wetland components of living shoreline projects shall be maintained as a wetland, with areal coverage by native, hydrophytic, non-nuisance species of at least 85% for five (5) consecutive years.

(v) Living shoreline projects must result in no net loss of wetlands.

(vi) Free-standing wave screens should be designed with an appropriate spacing between slats and a minimum elevation of 12 inches off the bottom of the waterway. The spacing between slats and distance off the bottom of the waterway should be evaluated taking into consideration the wave energy of the project site.

(vii) No discharges of dredged or fill material may be placed in excess of the minimum needed for erosion protection. Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline.

(viii) The fill must be placed parallel to the uplands, other than groins and returns on stone sills.

(ix) Clearing and/or pruning of riparian trees and shrubs within the

defined project area shall be minimized to the maximum extent practicable.

(x) To sustain the effectiveness of the living shoreline project and its living, biological components (e.g., marsh grasses, oysters) in managing shoreline erosion and providing ecological functions, the permittee must avoid destruction or alteration of the constructed tidal marsh (e.g., mowing, pulling, or otherwise destroying planted grasses).

(xi) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms.

(xii) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore.

(xiii) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This activity authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

(xiv) Written documentation must be required to support the preferred stabilization method.

f(3) New Bulkheads, Including Stone Toe Protection:

This activity authorizes the construction of new bulkheads and associated backfill for the purpose of erosion protection and includes the placement of stone toe protection. This activity also authorizes replacement of currently non-serviceable bulkheads and associated backfill. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and/or 404; limited to tidal waters).

(a) Category A Impact Limits and Requirements:

(i) New bulkheads or replacement of currently non-serviceable bulkheads or associated backfill must not exceed 500 linear feet in length and shall be placed at the mean high-water shoreline.

(ii) Stone toe protection placed along the base of a new bulkhead must not extend more than 10 feet channelward of the bulkhead face or the minimum necessary to provide adequate stabilization, whichever is less.

(iii) No impacts to special aquatic sites, including intertidal mudflats, vegetated marsh, and sites that support SAV (documented to exist in the last five years as specified in Section III), or anadromous fish spawning areas are authorized by this activity.

(iv) Only clean, non-metallic, non-organic, non-floatable fill material obtained from an upland source may be used as backfill material.

(b) Category B Impact Limits and Requirements:

(i) This activity authorizes new bulkheads and replacement of currently non- serviceable bulkheads up to three feet channelward of the mean high-water shoreline, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(ii) The single and complete project will result in no more than a total 0.5-acre loss to tidal waters of the United States, to include stream channel, wetlands, and open waters and the total length of new bulkhead along the bank may not exceed 1,000 linear feet, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(iii) Stone toe protection placed along the base of a new bulkhead must not extend more than 10 feet channelward of the bulkhead face, unless the Corps waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(iv) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long bulkhead).

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) The erosion control structure and backfill must be constructed as close to the uplands and/or bank as structurally feasible.

(iv) This activity does not authorize reclaiming eroded land.

(v) The use of stone for toe protection must be clean and free of toxins.

(vi) No material must be of the size or type or placed in any location or in any manner, so as to impair surface water flow into or out of any wetland area.

(vii) Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(viii) The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this activity and will require alternate Corps permit review procedures.

f(4) Nontidal Bank Stabilization Activities:

This activity authorizes discharges of dredged or fill material associated with installation of nontidal stream bank stabilization structures for the purpose of stream bank erosion protection. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. Nontidal stream bank stabilization activities include in order of preference: (a) non-structural/bioengineering bank stabilization measures such as root wads, brush layering, live stakes; (b) structural measures such as rock cross vanes, j-hooks, vortex rock weirs, imbricated riprap, conventional riprap, revetments, vegetated cribwalls; and (c) gabions or bulkheads. (Sections 10 and/or 404; limited to all nontidal waters).

(a) Category A Impact Limits and Requirements:

(i) The nontidal bank stabilization itself is limited to 500 feet in total length, with total impacts to nontidal waters of the United States not to exceed 10,000 square feet.

(ii) This activity does not authorize discharges into vegetated wetlands or SAV (documented to exist in the last five years as specified in Section III).

(b) Category B Impact Limits and Requirements:

(i) The single and complete project will result in no more than a total 0.5-acre loss to nontidal waters of the United States, to include stream channel, wetlands, and open waters and the loss of stream channel may not exceed 1,000 linear feet, unless the Corps waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse effects.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Discharges associated with nontidal bank stabilization projects must not exceed an average of one (1) cubic yard per running foot placed along the bank below the plane of the ordinary high-water mark unless the permittee utilizes bioengineering techniques to accomplish the stream bank stabilization.

(iii) No material may be placed in excess of the minimum needed for erosion protection.

(iv) If stone is used, the material used must be clean stone or broken concrete. Broken concrete must be clean and free of rebar or other protruding reinforcement.

(v) The activity must be constructed as close to the bank as structurally feasible.

(vi) This activity does not authorize reclaiming eroded land.

(vii) No material must be of a size, or type, or placed in any location, or in any manner, so as to impair surface water flow into or out of any waters of the United States.

(viii) Filter cloth must be used, or the project must otherwise by designed and constructed to prevent soil from washing into the waterway.

(ix) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(x) This activity does not authorize stream channelization, stream piping, or stream relocation projects. These activities may be reviewed under alternative Corps permit review procedures.

(xi) Nontidal bank stabilization material must cover only the minimum necessary for bank stabilization, must have no more than minimal effect on the stream bottom, and should not adversely modify stream hydrology and/or channel morphology. In addition, in-stream structures shall not block the passage of aquatic species.

(xii) Structural types of nontidal bank stabilization, such as revetments, conventional riprap, and gabions, must have voids/joints and they must be planted with live stakes, to provide additional bank stabilization and stream shading.

(xiii) Impacts to woody vegetation resulting from soil compaction around the root zone by heavy equipment should be minimized.

(xiv) Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

g) Return Water from Upland Contained Disposal Areas:

This activity authorizes the discharge of return water from upland, contained dredged material disposal areas into waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This activity satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act Section 401 certification procedures. The dredging activity may require a Section 404 permit (33 CFR 323.2(d)) and will require a Section 10 permit if located in navigable waters of the United States (Section 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(b) Category B Impact Limits and Requirements:

(i) Application must be submitted to MDE for Corps authorization. See Section II.D. for when an application is required to be submitted for Corps review.

h) Private Landowner Oyster Gardening:

All work authorized by this activity must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes cages placed on the bottom substrate and floats placed at the water's surface or within the water column by riparian landowners for purposes of growing oysters for personal use or to assist in restoration efforts, subject to the activity- specific impact limits and requirements, and the general conditions of this general permit (Section 10; limited to all tidal waters).

(a) Category A Impact Limits and Requirements:

(i) No application is required for Corps authorization.

(ii) This Category A activity does not authorize the installation of vertical lines.

(b) Category B Impact Limits and Requirements:

(i) Application must be submitted to MDE for Corps authorization. See Section II.D for when an application is required to be submitted for Corps review.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) The surface area of the floats or cages must not exceed 200 square feet of total coverage of the water column.

(ii) The native eastern oyster (*Crassostrea virginica*) shall be the species used in the oyster aquaculture activity in the floats.

(iii) The floats or cages must be attached to existing structures (e.g., piers, pilings, bulkheads, etc.) that are connected to the riparian owner's fast land.

(iv) This activity does not authorize activities within 50 feet of existing or mapped SAV (documented to exist in the last five years as specified in Section III) beds.

(v) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with navigation by the general public.

(vi) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with ingress and egress from adjacent properties and must be situated to comply with locally established property setback requirements, if any.

(vii) The riparian owner shall clearly mark the floats or cages with his or her name and address.

(viii) If the applicant wishes to include any navigational markers as part of the project, the applicant must prepare and provide for United States Coast Guard approval, a Private Aids to Navigation application CG-2554. The form can be found at this link: https://www.dcms.uscg.mil/forms/smdsearch4081/2554/.

(ix) The riparian owner shall recover all storm-damaged, accident damaged, or dislodged equipment within 48 hours after it is dislodged and shall dispose of such equipment in accordance with state and local ordinance.

(x) The riparian owner shall not cover, dredge, or otherwise alter or destroy any SAV (documented to exist in the last five years as specified in Section III) or tidal wetlands as a result of the deployment and/or storage of the floats and other equipment associated with the aquaculture operation.

(xi) The riparian owner shall not commercially harvest, sell, or market any of the shellfish for human consumption.

(xii) The riparian owner shall not use chemical therapeutics to treat shellfish held or raised under this authorization for diseases, parasites, or to enhance the physical condition of the shellfish.

(xiii) The riparian owner shall not possess a total number of shellfish that exceed 10,000 per site.

(xiv) The riparian owner shall obtain oyster seed from a Maryland vendor or obtain an approved Shellfish Import Permit from the MD DNR.

(xv) The riparian owner must not collect or release oysters without having obtained beforehand a valid Collection or Stocking permit from MD DNR.

(xvi) This activity does not authorize artificial reefs.

(xvii) This activity does not authorize impoundments and semi-impoundments of waters of the United States.

(xviii) The riparian owner shall maintain accurate records on the amount of shellfish placed in structures or floats and record the disposition of the shellfish. Reports shall be submitted annually and include name and address of riparian owner, location of floats, amount of shellfish raised, and final use (resource enhancement, restoration, or consumption by the riparian owner or others), including the location shellfish were moved to for enhancement or restoration activities. Reports shall be submitted to the State Shellfish Division by December 31 annually.

i) Emergency Situations:

This activity authorizes permanent and temporary structures or work in or affecting navigable waters of the United States and the permanent and temporary discharge of dredged or fill material into waters of the United States, including wetlands, necessary for emergency response and post-storm recovery activities where an imminent threat to life or property exists due to unforeseen events during an emergency situation, State of Maryland Emergency Declaration, or Federal Emergency Management Agency (FEMA) Declared Disaster. The activity shall be the minimum necessary to alleviate the immediate emergency. Typical activities authorized under this activity include, but are not limited to, restoration of damaged areas; bank stabilization; temporary fills for staging, access, and dewatering; and repair, replacement, or rehabilitation of existing structures and/or fills (i.e., roads, bridges, utility pipelines, and flood control structures, including attendant features, and other existing structures located in waters of the United States). The Corps regulations define an “emergency” as a situation, which would result in an unacceptable hazard to life, a significant loss of property, or an

immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. The situation must meet the Corps definition of "emergency" to qualify for this activity. An emergency situation necessitates that work be performed near the time of cause and/or discovery of the problem and need. Actions that require several months to plan and/or fund are not considered emergencies for the purpose of the Corps Regulatory Program. (Section 10 and/or 404; all waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet, no more than 200 linear feet of streams, rivers, and other open waters.

(ii) This activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, tidal wetlands, or in nontidal wetlands adjacent to tidal waters. Category B or alternate Corps permit review procedure is required.

(iii) Removal of storm deposited sediment/gravel in stream channels is limited to a total distance up to 200 linear feet in any direction from the structure.

(iv) Stream channel re-alignments must not exceed a total 100 linear feet along the stream centerline. Category B or alternate Corps permit review procedures are required for stream re-alignment/relocation projects that do not propose nature-based techniques such as bioengineering and vegetative stabilization to relocate impacted streams.

(v) Dredging and/or discharges associated with the excavation are limited to no more than 100 cubic yards.

(vi) The activity representing the single and complete project must be eligible under a FEMA Declared Disaster and/or State of Maryland Emergency Declaration.

(vii) No minor deviations are authorized under Category A. Activities resulting in minor deviations in the structure or fill areas, including those to existing structures or fills, require a Category B review.

(viii) Projects authorized under this Category A activity must be initiated within fourteen (14) calendar days of receiving written verification. The permittee has 180 calendar days from start of construction to complete the work from the date of the verification letter. Activities that cannot meet these timelines must be reviewed by the Corps under a Category B or other Corps permit process.

(b) Category B Impact Limits and Requirements:

(i) Bank stabilization to prevent or minimize erosion or the loss of structures shall be constructed using nature-based stabilization techniques, unless determined to not be practicable by the Corps. Native plants appropriate for current site conditions, including salinity and elevation, must be used for bioengineering or vegetative bank stabilization.

(ii) Bank stabilization must not exceed 1,000 linear feet along the bank, unless the Corps waives this criterion by making a written determination concluding that the discharge of fill material will result in no more than minimal adverse environmental effects.

(iii) The single and complete project will result in no more than a total 0.5-acre loss of tidal and nontidal waters of the United States, unless the Corps waives this criterion by making a written determination concluding that the discharge of fill material will result in no more than minimal adverse environmental effects.

(iv) Minor deviations in the structure or fill area, including upgrades are authorized due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards.

(v) Work in waters of the United States may begin after receiving Corps notification that the project is authorized under this activity. If immediate action is required, the Corps may informally authorize the activities, and subsequently complete agency coordination and formal authorization.

(vi) Projects authorized under this Category B activity must be initiated within fourteen (14) calendar days of receiving written authorization. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an “emergency situation”. If the project start time can be delayed, the imminent threat of impending loss may have diminished in magnitude as well as immediacy, and other permitting authorities may be more appropriate. However, there may be limited circumstances where after coordination with other agencies, the Corps determines that there are logistical considerations that necessitate an extension of time.

(vii) The time limit for completing the work authorized by this Category B activity is 180 days from the date of permit verification, unless otherwise specified in the Corps verification letter. If additional time is required to complete the authorized activity, a written request for a time extension, including justification for the request, must be submitted to the Corps at least 30 calendar days prior to the expiration of the verification.

(c) Requirements Applicable to Both Category A and Category B Activities:

In an emergency situation, prior to performing the emergency work, an applicant must contact the Corps and MDE by telephone and/or email regarding the proposed emergency work (nab-regulatory@usace.army.mil) and use the subject, “Emergency Authorization Requested.”

(i) The applicant must provide the following activity-specific information in the Emergency Authorization request email:

(a) A brief description of the nature of the situation (i.e., how the situation demonstrates the “clear, sudden, unexpected, and imminent threat to life or property”), the severity of the threat, and the estimated timeframe for completion of the construction. When applying for an emergency activity verification, you must describe the activity in detail and explain why the activity cannot be processed under normal timeframes.

(b) A description of methods anticipated to be used to rectify the situation (“field engineering” is not an adequate description) along with a summary of any and all avoidance and minimization measures. Plans, drawings, or sketches depicting the area to be directly affected by filling and dredging activities, and other aquatic areas indirectly affected by the project activities (such as dewatering, stream diversion, access routes, etc.), cross-sections showing details of construction, and a short narrative describing how the work is to be completed.

(c) A brief description of the project area’s existing conditions and anticipated impacts resulting from the proposed wok (quantity and location of dredge or fill material deposited or excavated, removal of significant vegetation, loss of habitat, etc.).

(ii) For restoration of areas damaged by storm floods, or other discrete events: (a) the restored area must not extend waterward of the ordinary high-water mark or high tide line that existed prior to the damage (i.e., the restoration must not narrow the width of the water body as it existed prior to the damage), (b) the slope of the restored area below the ordinary high water mark or high tide line must not exceed the slope that existed prior to the damage, and (c) the bottom elevation of the restored area must not exceed the bottom elevation that existed prior to the damage (i.e., the restored area must not result in a reduction in the depth of the waterbody that existed prior to the damage).

(iii) Upon initially contacting the Corps and MDE in an emergency situation in accordance with the procedures above, the applicant for the emergency work must submit a joint federal/state permit application and plans to MDE within three days of completing the emergency work, unless granted an extension.

(iv) The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

(v) Authorized activities must be limited to the minimum necessary to

alleviate the immediate emergency situation.

(vi) The following activities or practices are not eligible for coverage under this activity:

(a) Any work in waters of the United States to reclaim land that was lost over an extended period of time due to normal erosion occurring prior to the discrete emergency event.

(b) Repair and/or replacement of existing structures and/or fills that were non-functional just prior to the discrete emergency event.

(c) Restoration of non-functional bulkheads and their remnants (including deadman and pierheads) existing prior to the discrete emergency event.

(d) Repair and/or replacement of bulkheads that extend greater than 18 inches channelward from the pre-storm location.

(e) Installation of new bulkheads or vertical walls in wetlands, vegetated shallows or mudflats where structures did not exist.

(f) Installation of new bridges or culverts.

(g) The removal of stream gravel for the express purpose of sale as part of a gravel mining operation.

(h) Dredging or extraction of sediment or debris that was not deposited from the storm event or is not necessary to prevent the loss of property or reduce flooding and/or erosion.

(i) Channelization, channel widening, deepening, or straightening activity that contributes to stream instability.

(j) Side-casting of dredged material along streams.

(k) Construction of in-stream sediment detension basins,

(l) Installation of new gabion rock walls below the OHW or MHW elevation.

(m) Installation of new concrete aprons within waterways.

(n) Permanent replacement of multiple barrel culverts used at a single crossing within streams.

(o) Building permanent berms with the excavated stream material or any other materials.

(vii) The applicant must provide the Corps with a report within 30 days following completion of construction activities in waters of the United States:

(a) A complete description and quantification of impacts to waters of the United States for work completed at each single and complete project, including deviations from the activities in waters of the United States authorized by this activity, and the reason(s) for the deviations.

(b) Drawings of the as-built authorized work conducted for each single and complete project, and any on-site and/or off-site permittee-responsible compensatory mitigation. The drawings shall include a plan view drawing of the location of the authorized work (as shown on the permit drawings), with an overlay of the work constructed in the same scale as the permit drawings, and a cross-section view drawing. Please not that any substantial deviations from the work as authorized, must be coordinated with the Corps prior to impacts.

(c) Numbered and dated pre- and post-construction color photographs of the work conducted within a representative sample of the permanently filled waters of the United States, all of the partially filled waters of the United States, and all avoided waters of the United States on and immediately adjacent to the project area. The compass angle and position of all photographs shall be identified on the plan-view drawing(s).

(d) Information to show construction of each authorized single and complete project was conducted in accordance with all terms and conditions of this MDSPGP-7 activity.

(e) A description and photo-documentation of all best management practices, and construction limit markers.

(f) A description and photo-documentation of all temporary fill area(s) restored to pre-project contours and conditions, including photo documentation of the horizontal marker(s) installed. For temporary fill areas within waters of the United States that have not been restored to pre-project contours or conditions, a description and photo-documentation of the temporary fill within waters of the United States, including information on why restoration has not been completed.

Note: Prior to the use of emergency permitting, alternative means for authorizing the work will be considered. For example, exemptions for certain types of emergency work in nontidal and non-navigable waters are provided for in 33 CFR 323.4(a)(2). Under these regulations, any discharge or fill material that may result from maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge

abutments or approaches, and transportation structures, is not prohibited by or otherwise subject to regulation under Section 404 of the Clean Water Act. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption. The nationwide permits also authorize certain types of work that may be applicable to emergency situations. Letters of permission, regional general permits, or other activities authorized by the MDSPGP-7 may also provide acceptable options for permit decisions related to emergency work. If the work would not be started for several months, it would not normally be considered an emergency per the Corps definition at 33 CFR 325.2(e)(4).

j) Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems (MS4) Activities:

The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

j(1) Retrofits Of Existing Stormwater Management Facilities:

This activity authorizes the discharges of dredged or fill material into nontidal water of the United States for the retrofit of existing stormwater management facilities. Stormwater management retrofit refers to those activities that modify an existing stormwater management facility for the purpose of improving nutrient and sediment removal by the existing structural stormwater management facility that currently has little or no treatment. This activity applies only to the retrofit of features originally designed as stormwater management facilities, which are currently serviceable. Authorized activities may include, but are not limited to, changing the existing riser structure, creation of forebays (i.e., pretreatment cells within the existing facilities), changing pond elevations or creation of wetland benches. (Section 404, limited to non-tidal waters of the United States).

(a) Category A Impact Limits and Requirements:

(i) The total permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed one acre and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

(ii) The loss or conversion of streams, rivers and/or wetlands and other open waters is not authorized under Category A.

(b) Category B Impact Limits and Requirements:

(i) The total permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open

waters are not to exceed three acres and/or 3,000 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) The conversion from nontidal streams or rivers (excluding wetlands) to open water or wetlands must not exceed 5,000 square feet or 200 linear feet of nontidal streams and/or rivers.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) The authorized work does not include an expansion of stormwater management facilities outside the existing original as-built footprint or any available supplemental documentation identifying the existing limits of the facility.

(iii) The application must include the original as-built plans or any available supplemental documentation for the project including identifying the existing limits of the facility.

(iv) This activity does not authorize work in nontidal navigable waters under Section 10 of the Rivers and Harbors Act of 1899. Applications proposing work in navigable waters under Section 10 of the Rivers and Harbors Act must be reviewed under another Corps permit review procedure, as appropriate.

(v) Activities that are solely designed for general maintenance activities within existing Stormwater Management Facilities may be reviewed under an alternative permit process such as under another activity of the Maryland State Programmatic General Permit, an Individual Permit, or a Nationwide Permit.

(vi) Within 30 days from the completion of the authorized work, all temporary impacts within the project area, must be restored to preconstruction contours, elevations, and stabilized. Areas that require planting must be planted within the first growing season after completion of the project.

(vii) By December 31 of the project year, the applicant must provide surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work, including the restoration of the temporary impacts. As-built drawings must be completed within 90 days of completion of work within the project area.

j(2) Nontidal Stream And Wetland Restoration And Enhancement Activities Associated With An Acceptable TMDL/MS4 Watershed Strategy:

This activity authorizes stream and wetland restoration and enhancement activities in nontidal waters of the United States, which includes nontidal wetlands, streams, rivers,

and other nontidal open waters. The activity must be part of an acceptable TMDL/MS4 watershed strategy to reduce nutrients and sediment pollution and produces functional lift within the project site. This activity applies to the discharge of dredged or fill material, including attendant features both temporary and permanent, which will result in impacts to nontidal waters of the United States. (Section 404, limited to nontidal waters of the United States).

Activities authorized include, but are not limited to, the placement of in-stream structures for riffle-grade control, habitat structure placement, and/or modifications to the stream bed and/or banks to enhance, rehabilitate, or re-establish meanders. This activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899 or nontidal wetlands adjacent to tidal waters.

(a) Category A Impact Limits and Requirements:

(i) The total permanent and temporary impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 0.5 acre including no more than 1,000 linear feet of streams, rivers, and other nontidal open waters.

(ii) The discharge will not result in permanent loss or conversion of any type of waters of the United States, which includes wetlands, streams, rivers, and other nontidal open waters.

(iii) No activities in Coldwater and Tier II streams are authorized under Category A. To avoid adverse effects to native aquatic species from increased water temperatures, Category B review is required for any work proposed in Coldwater streams (Use III and Use IV waters, and other cold-water resources identified in mapped waterways (COMAR 26.08.02.02; https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a) or work proposed in Tier II watersheds (COMAR 26.08.02.04-1).

(b) Category B Impact Limits and Requirements:

(i) The total permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters are not to exceed three (3) acres and/or 5,000 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) The total permanent loss or conversion must not exceed 10,000 square feet of waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters. Of this, no more than 200 linear feet of nontidal streams, rivers, open waters, or a combination thereof, may be permanently lost or converted.

(c) Requirements Applicable to Both Category A and Category B Activities:

(i) Application must be submitted to MDE for Corps authorization.

(ii) For stream restoration projects, the following information must be included in the application:

a. A copy of a completed current version of the MDE Stream Restoration Authorization Checklist;

b. A statement that describes the acceptable watershed strategy and how it supports selection of the project site. The statement shall include information regarding how the acceptable watershed strategy has incorporated upland best management practices, upland stormwater management retrofits, and LID practices to the maximum extent practicable. An acceptable watershed strategy for identifying nutrient and sediment reduction activities is required to focus retrofit and restoration efforts at locations that will provide the most benefit in terms of sediment and nutrient reduction;

c. A restoration narrative identifying how all temporary fills and structures will be removed and the area restored to preconstruction conditions (i.e., any soil amendments used, remediation for compaction, and/or restoration of previous hydrology levels and duration);

d. Documentation that the existing (preconstruction) stream reach is in a degraded using an approved Corps stream and wetland functional assessment in combination with geomorphic evidence of stream quality degradation. The applicant must also provide a rationale for stream site selection and the proposed design approach using applicable evidence, prioritization tools (i.e., excessive erosion as indicated by Bank Erosion Hazard Index/Bank Assessment for Non-Point Source Consequences of Sediment (BEHI/BANCS), impaired stream conditions and/or functions as documented by a Functional or Conditional Assessment Methodology (FCAM), and literature. Corps approved stream and wetland functional assessments can be found here: Baltimore District > Missions > Regulatory > Mitigation.

(iii) Riparian and wetland vegetation in the authorized project area shall be protected from unnecessary clearing and disturbance to the maximum extent practicable through:

a. Minimization of project and impact footprint

b. Designation of staging areas and access points in open, upland areas

c. Fencing or other barriers demarking construction areas, or

d. Use of alternative equipment (e.g., crane, portable bridges).

(iv) The project must be self-sustaining, meaning that a project must be designed in a way that does not require routine work to maintain the as-built integrity.

(v) Within 30 days from the completion of the authorized work, all temporary impacts must be restored to preconstruction contours, elevations, and stabilized. Areas that require planting must be planted within the first growing season after completion of the project.

(vi) The permittee must electronically provide a post-construction report (PDF format preferred) to the Corps (NAB-Regulatory@usace.army.mil) by December 31 of project completion year. The post-construction report shall include:

a. The Corps application tracking number and State permit number.

b. Location of the completed work (latitude and longitude in decimal degrees).

c. Dates during which the work occurred.

d. A point of contact name and contact information (email and phone).

e. A set of geo-referenced photographs that show the pre-construction and post-construction conditions of the project using consistent photo stations.

f. A narrative describing how the project purpose and objectives were met.

g. Surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts. As-built drawings must be completed within 90 days of completion of the work.

(vii) The permittee must electronically provide an annual monitoring report to the Corps (nab-regulatory@usace.army.mil) by December 31 of each respective year. (Note: Three-year post construction monitoring reports are in addition to Year 1 Post Construction Monitoring Requirements noted above. Monitoring requirements listed below apply to all three years, unless otherwise specified). The monitoring reports must include:

a. The Corps application tracking number and State permit number.

b. Location of the completed work (latitude and longitude in decimal degrees).

c. Dates during which the work occurred.

d. A point of contact name and contact information (email and phone).

e. A set of geo-referenced photographs that show the pre-construction and post-construction conditions of the project using consistent photo stations.

f. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction functions and conditions using the same functional/conditional assessment methodology to determine degradation.

g. Documentation of achievement of design objectives as compared to baseline values.

h. Documentation of at least 85% coverage of the riparian vegetation, including volunteers. Of these, invasive species coverage may not exceed baseline (Year 3 only).

i. Documentation of the re-establishment of impacted or relocated wetlands and streams (years 1 and 3 only).

j. A delineation of wetlands and waterways for the project site to ensure that there has been no additional loss or conversion. If additional loss or conversion is determined, the applicant may need to provide compensatory mitigation (Year 3 only).

k. A detailed description of any necessary corrective measures, including maintenance and repair, or alteration in any way, of the permitted work. (Note: permittees must notify the Corps of proposed corrective measures at least 15 days prior to performance of such corrective measures for review and approval. In addition, a summary of corrective measures must be included in the monitoring report for the respective year).

l. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction ecological functions and conditions using a Function/Conditional Assessment Method for three (3) years following construction completion.

m. If monitoring shows that a project is not trending towards success in meeting project goals and objectives, monitoring may be extended on a

case-by-case basis. Projects not meeting required functional lift and stability by year three may result in noncompliance or enforcement actions by the Corps, or compensatory mitigation requirements.

V. DEFINITIONS:

The following terms are defined for the purposes of the MDSPGP-7:

Adjacent Wetlands: "Adjacent wetlands" are defined in 33 C.F.R. 328.3(c)(1).

Anadromous Fish: Anadromous fish are born in freshwater, spend most of their lives in saltwater (ocean), and return to freshwater to spawn. Common Chesapeake Bay area species include alewife and blueback herring, American and hickory shad, American sturgeon, and striped bass.

Best Management Practices: Best Management Practices are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. Best Management Practices are categorized as structural or non-structural.

Breakwater: A structural shoreline stabilization measure comprised of a segmented or non-segmented stone structure that is typically placed offshore parallel to the shoreline and designed to dissipate wave energy and reduce erosion.

Catadromous Fish: Catadromous fish, such as American eel, are opposite from anadromous fish in that they live in freshwater and enter saltwater to spawn.

Compensatory Mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved as referenced 33 C.F.R. 332.2.

Construction Mats: Construction, swamp, and timber mats (herein referred to as "construction mats") are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they are installed temporarily or permanently.

Currently Serviceable: Useable as is or with some maintenance, but not so degraded as

to essentially require reconstruction.

Discharge of Dredged Material: The term “Discharge of Dredged Material” is defined at 33 CFR 323.2(d).

Discharge of Fill Material: The term “Discharge of Fill Material” is defined at 33 CFR 323.2(f).

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area as defined as in 33 C.F.R.§332.2.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year- round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site (e.g., wetlands on an upland site). Establishment results in a gain in aquatic resource area and functions.

Federally Authorized Civil Works Project: A project which has been demonstrated to be in the federal government's interest and authorized by the Congress that provides infrastructure such as dams and reservoirs, flood risk reduction, ecosystem restoration, hydropower or navigation.

Fill Material: The term “fill material” is defined at 33 CFR 323.2(e).

High Tide Line: A high tide line is the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide as determined by actual data, other physical characteristics, or by other suitable means to delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges (33 CFR 328(c)(4)).

Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR 800.16; see also 36 CFR part 60 for National Register criteria).

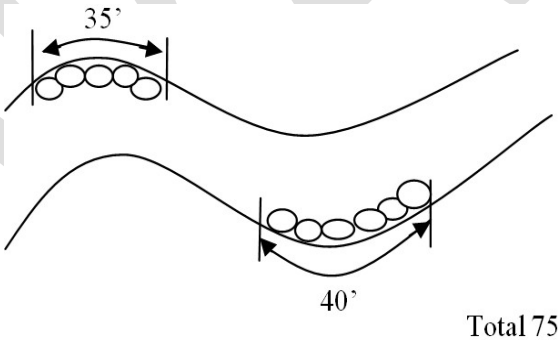
Independent Utility: A test to determine what constitutes a single and complete non-linear project for the MDSPGP-7. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

Indirect Impacts: Effects that are caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

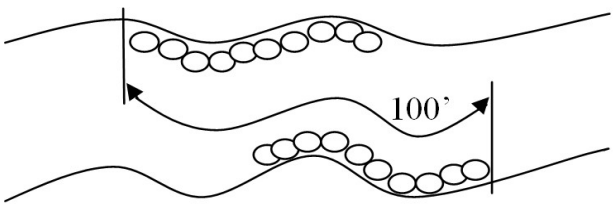
Linear Footage of Stream Impact: For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts, the linear footage of stream impact shall be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

a. For regulated work on one stream bank, the linear footage of a stream impact shall be measured along the bank being impacted. When both banks of the stream are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.



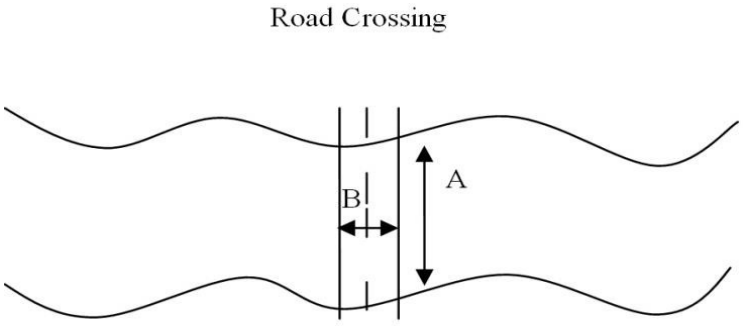
Total 75 Linear Feet

b. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact shall be measured along the centerline of the stream.



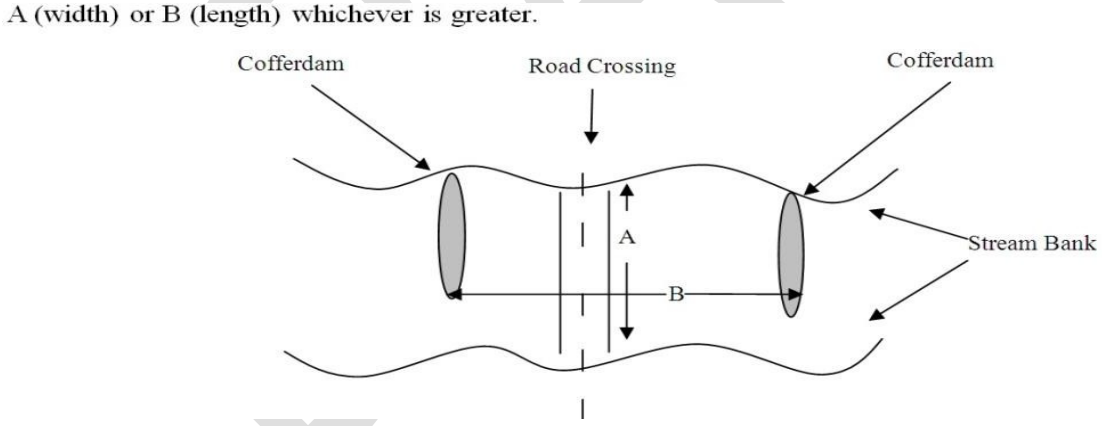
Total 100 Linear Feet

c. For transverse impacts (perpendicular to the stream bank), the linear footage of stream impact shall be measured from the top of bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements:



A (width) or
B (length)

d. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.



Linear Projects: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations (e.g., highways, gas pipelines, fiber optic lines, railways, wastewater pipelines, utility lines, etc.).

Loss of Waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of

dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an MDSPGP-7; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Low Profile Sill: A low profile offshore structure whose crest is at or near the mean high-water line, no more than 1 foot above the elevation of the mean high-water line, designed to retain sand and marsh on its landward side.

Mean High Water: In coastal areas, the line on the shore reached by the plane of the mean (average) high water. For precise determination, it must be established by survey with reference to the available tidal datum, preferably over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used for estimate purposes.

Navigable Waters of the United States: Those waters that are subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.4. Specifically for the Baltimore District area of responsibility within Maryland, navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act of 1899 include all waters subject to the ebb and flow of the tide (to the head of tidal influence), the main stem Susquehanna River from its mouth to the Maryland State boundary, and the Potomac River from its mouth to the confluence with Wills Creek in Cumberland, Maryland.

Nontidal Wetland: A nontidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., the spring high tide line.

Open Water: For purposes of the MDSPGP-7, an open water area is any area that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high-water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes oceans, bays, rivers, streams, lakes, and ponds.

Ordinary High-Water Mark: The line on the shore established by the fluctuations of

water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial Stream: A perennial stream has surface flowing water continuously year-round during a typical year.

Permanent Conversion: The term as used in this document refers to the permanent conversion of a specific wetland type to another wetland type. For example, converting a forested wetland to a permanent emergent wetland would be considered a permanent conversion, in association with a regulated activity. Such conversion may result in the permanent loss of certain functions and services that may require compensatory mitigation. These areas are typically manipulated over time by human activity to prevent their return to preconstruction wetland type, and includes areas that are manipulated by mowing, cutting, and/or herbicide use. Permanent conversion does not include areas that are allowed to return to their preconstruction condition either naturally or through some type of restoration activity.

Permanent Impacts: Waters of the United States that are indefinitely filled, flooded, excavated, or drained as a result of the regulated activity. Permanent impacts may or may not be considered a loss of waters of the United States, as defined above, since some permanent impacts, such as those associated with certain bank stabilization activities and stream/wetland enhancement projects, may not have a permanent adverse effect.

Personal Watercraft: In accordance with COMAR 08.18.02.04, a personal watercraft is a “Class A” vessel, as defined by the United States Coast Guard in 46 CFR §24.10-17, which “(a) has an inboard motor which uses an internal combustion engine powering a water-jet pump as its primary source of motive propulsion; (b)is designed with the concept that the operator and passenger ride on the outside surfaces of the vessel as opposed to riding inside the vessel; (c) has the probability that the operator and passenger may, in the normal course of use, fall overboard; and (d) is designed with no open load- carrying area which would retain water.”

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions (33 CFR 332.2).

Previously Authorized: Previously authorized indicates that a Department of the Army permit or verification issued the structure or fill at some point in the past.

Re-establishment: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions (33 CFR 332.2).

Rehabilitation: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in again in aquatic resource function but does not result in a gain in aquatic resource area (33 CFR 332.2).

Restoration: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation (33 CFR 332.2).

Single and Complete Linear Project: A linear project is a project including all attendant features, constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distinct locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distinct locations, each crossing is considered a single and complete project; therefore, the Category B eligibility thresholds will apply to each separate crossing. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc. are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and Complete Project (Non-Linear Projects): For non-linear projects, the term “single and complete project” means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built may be considered as separate single and complete projects with independent utility. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a MDSPGP-7 authorization.

Special Aquatic Sites: Wetlands, mudflats, vegetated shallows (including SAV), coral reefs, riffle and pool complexes, sanctuaries, and refuges under the 404(b)(1) Guidelines, as defined at 40 CFR 230.40 through 230.45.

Submerged Aquatic Vegetation: SAV is a type of vegetated shallows that are

permanently inundated areas that under normal circumstances which support communities of rooted aquatic vegetation, as specified in 40 CFR 230.43.

***Temporary Impacts*:** For the purpose of MDSPGP-7, temporary impacts include, but are not limited to, waters of the United States that are filled, flooded, excavated, or drained for a limited period of time, and restored to pre-construction contours and elevations after construction. The affected areas must be revegetated as appropriate. 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-7.

Stream Channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Tidal Wetland: A tidal wetland is a jurisdictional wetland (i.e., a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(c)(1) and 33 CFR 328.3(c)(5), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Waters of the United States and Navigable Waters of the United States: Waters of the United States is defined at 33 CFR 328.3, and for the purpose of this document, the use of the term "waters of the United States" is inclusive of navigable waters of the United States (33 CFR 329.4).

VI. ALTERNATE CORPS PERMIT REVIEW:

Activities that require DA authorization, but do not meet the terms and/or conditions of the MDSPGP-7 are ineligible for authorization/verification under the MDSPGP-7 and will be reviewed under alternate standard individual Corps permit procedures. However, during the alternate standard individual Corps permit review, the Corps may determine that the proposed adverse environmental effects have been reduced to minimal and the proposed project meets the terms and conditions of the MDSPGP-7. At that time, the Corps may verify MDSPGP-7 eligibility for the project.

Notwithstanding compliance with the terms and conditions of the MDSPGP-7, the Corps retains discretionary authority to require an alternate standard individual Corps permit review for any project under any categories of the MDSPGP-7 based on concerns for the aquatic environment or for any other public interest factor. This authority may be invoked on a case-by-case basis during the review process whenever the Corps determines that, based on the concerns stated above, the potential consequences of the

proposed project warrant individual review. In some rare instances, the Corps may have concerns for the aquatic environment or for any other public interest factor pertaining to a specific proposed project, which has already received a case-specific verification as a Category A activity. In order to evaluate this project under an alternate Corps permit review, the verification must be suspended in accordance with Section VIII.E of the MDSPGP-7.

Whenever the Corps notifies an applicant that an alternate standard individual Corps permit may be required, authorization under the MDSPGP-7 is voided. No work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under the MDSPGP-7 or other applicable authorizations.

If a project is ineligible under the terms and conditions of the MDSPGP-7, the Corps will notify MDE and the applicant that the project will require further evaluation under alternate standard individual Corps permit procedures, including a public interest review. All information submitted by the applicant for MDSPGP-7 review will also be used by the Corps for the alternate standard individual Corps permit review. Individual WQC and CZC concurrence may be required for projects alternatively reviewed. Water Quality Certification and CZC may be included as part of MDEs tidal wetlands or nontidal wetlands and waterways authorizations.

VII. GENERAL CONDITIONS:

To qualify for MDSPGP-7 authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any activity-specific impact limits and requirements identified in the Description of MDSPGP-7 Authorized Activities, and any case-specific special conditions imposed by the Corps.

1. **Other Permits:** Authorization under the MDSPGP-7 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-7 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. Unless the Corps determines the activity has independent utility, all components of a single project and/or all planned phases of a multi-phased project (e.g., subdivisions should include all work such as roads, utilities, lot development, dredging and disposal, etc.) shall be treated together as constituting one single and complete project. If any component of a single and complete project requires a Category B review by the Corps, the entire single and complete project shall be reviewed by the Corps.

4. **Use of Multiple MDSPGP-7 Activities:** More than one MDSPGP-7 activity may be used to authorize a single and complete project subject to the following restrictions:

- The specific requirements, including all activity- specific requirements and impact thresholds, must be met for each MDSPGP-7 activity.

- If only one of the MDSPGP-7 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 acreage and/or linear foot limit of the MDSPGP-7 activity with 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-7.

- If one or more of the MDSPGP-7 activities used to authorize the single and complete project has specified acreage and/or linear foot limits, the acreage or linear foot impacts to waters of the United States authorized by those MDSPGP-7 activities cannot exceed their respective specified acreage and/or linear foot limits. For example, if a commercial development is constructed under Category B(e)(9), and the single and complete project includes new bulkhead construction under Category B(f)(3), the maximum acreage loss of waters of the United States for the commercial development cannot exceed 0.5 acre, and the total acreage loss of waters of the United States due to Category B(e)(9) and (f)(3) cannot exceed 0.5 acre.

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-7 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-7 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-7.

5. **Permit On-Site:** The permittee shall ensure that a copy of the MDSPGP-7 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.dcms.uscg.mil/forms/smdsearch4081/2554/ . 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 United States 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: cgd5waterways@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 Cody.

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:**

a. Any activity authorized by the MDSPGP-7 shall comply with Section 106 of the National Historic Preservation Act. When an application submittal is required, MDE, in cooperation with the 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 reviewing an application submittal, the Corps will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. When an application submittal is not required for MDSPGP-7 authorization, the applicant must coordinate with the Maryland Historical Trust concerning historic properties that might be affected by the proposed activity.

b. In the application submittal, 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. This notification must state which historic properties might have the potential to be affected or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.

c. 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 of, or potential for, the 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-7.

d. Prospective permittee should be aware that section 110K of the National Historic Preservation Act (54 U.S.C.306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the Advisory Council on Historic Preservation and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, MHT, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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-7 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, United States 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 or Threatened Species:** The MDSPGP-7 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: https://ecos.fws.gov/ipac, 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. **Pile Driving Best Management Practices Applicable to all Category A and Category B Activities within Tidal Waters and Wetlands:**

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a. For impact pile installation: In compliance with the ESA, a ramp-up will be required for the impact hammer operations. The ramp-up operations will involve starting with an initial set of three strikes from the impact hammer at 40% energy, followed by a one minute waiting period, then two subsequent three-strike sets and a minute waiting

period. During ramp-up, the contractor will monitor the project area and if sea turtles, sturgeon, or marine mammals are sighted within the project area, he/she will implement a shutdown.

b. For vibratory pile installation: In compliance with the ESA, a ramp-up will be required for the vibratory hammer operations. Pile driving will be initiated for 15 seconds at reduced energy followed by a one-minute waiting period. This sequence of 15 seconds of reduced energy driving and one-minute waiting period will be repeated two additional times, followed immediately by pile-driving at full rate and energy.

c. In addition to using a soft start at the beginning of the workday for pile driving, a soft start must also be used at any time following cessation of pile driving for a period of 30 minutes or longer.

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-7 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, United States 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 United States 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-7 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/**.** When a Section 408 permission is applicable, written verification for the MDSPGP-7 will not be issued prior to the decision on the Section 408 permission request.

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-7 or any specific MDSPGP-7 verification.

20. **Fills Within 100-Year Floodplain:** The activity must comply with applicable FEMA-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/law/bald-and-golden-eagle-protection-act.

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/documentn umber/150_5200-33.

24. **Water Quality Certification:** A water quality certification issued by the state is required by Section 401 of the Clean Water Act, for an activity authorized by the MDSPGP-7 which may result in a discharge from a point source into waters of the United States. Water quality certifications may be granted without conditions, granted with conditions, denied, or waived for specific activities. Permittees must satisfy any conditions imposed by the State of Maryland and EPA, where applicable, in their Water Quality Certification for the MDSPGP-7 pursuant to Section 401 of the Clean Water Act. The Corps believes that, in general, the activities authorized by the MDSPGP-7 will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act, and state regulatory requirements for point source discharges into waters of the United States. The Corps will request water quality certification for these MDSPGP-7 activities from the State of Maryland. of this permit.

25. **Coastal Zone Management Consistency (CZM):** Any state with a federally approved Coastal Zone Management Act program must concur with the Corps’ determination that activities authorized by the MDSPGP-7 which are within or will have reasonably forseeable effects on any land or water uses or natural resources of the state’s coastal zone, are consistent with the Coastal Zone Management Act program to the maximum extent practicable. Coastal Zone Management Act consistency concurrences may be issued without conditions, issued with conditions, or denied for specific MDSPGP-7 activities. The Corps believes that all activities authorized under the MDSPGP-7 will be carried out in a manner consistent with the Coastal Zone Management Program pursuant to Section 307 of the Federal Coastal Zone Management Program of 1972, as amended. The Corps will request the State of Maryland’s concurrence or objection to the consistency statement.

26. **Coastal Barrier Resources Act:** 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, United States Virgin Islands, and Puerto Rico coasts. Activities

authorized under the MDSPGP-7 must comply with the Coastal Barrier Resources Act. 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-7 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 individual and cumulative 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 individual and cumulative adverse effects on the aquatic environment are minimal and that the project is eligible for authorization under the MDSPGP-7:

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.

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 3/100 acre (1,307 square 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. Minimum stream mitigation requirements shall be determined using the current Corps endorsed methodology (i.e., Maryland Stream Mitigation Framework).

c. Where both wetlands and streams or other open waters exist on the project site, the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) will be determined based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the Corps may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

d. 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.

e. All compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR Part 332.

f. The applicant is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse effects on the aquatic environment. For MDSPGP activities, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits. However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the application is submitted to the Corps, the Corps may approve the use of permittee-responsible

mitigation. Applicants may propose the use of mitigation banks, in-lieu-fee programs, or separate permittee-responsible mitigation. When developing a compensatory mitigation proposal, the applicant must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b).

g. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

h. If the proposed activity will result in the loss of greater than 5,000 square feet of wetland or 3/100-acre (1,307 square feet) of stream bed, and a Category B review is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

i. 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-7 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, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the MDSPGP-7 authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).The special conditions of the MDSPGP-7 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.

j. 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-7 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.

k. 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.

l. Compensatory mitigation will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-7. 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-7.

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.

31. **Work in Special Aquatic Sites & Shallow Water:** To minimize adverse impacts to special aquatic sites and benthic communities, construction vessels/barges should float at all tide stages and avoid operating in special aquatic sites where possible during construction.

32. **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-7. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-7 shall be properly stabilized during use to prevent erosion.

a. All temporary fills and structures 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 to the region and noninvasive 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.

33. **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.

34. **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.

35.

36. **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.

37. **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. New crossings of all waters of the United States should be designed and constructed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation and justification is required to deviate from the order of preference.

38. **Discharge of Pollutants and Debris:** All activities that are authorized under the MDSPGP-7 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.

39. **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-7. The applicant may refer to

Maryland Coastal Atlas website (https://dnr.maryland.gov/ccs/coastalatlas/Pages/default.aspx) or other reliable sources for this information.

40. **Anadromous Fish Time-of-Year Restrictions:** This condition applies to activities a(3), b(1), b(2), b(4), 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://dnr.geodata.md.gov/CoastalAtlas/) 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.

41. **Use of the Dredging Quality Management (DQM) Program for dredging projects:** The condition applies to activities a(9), a(10), f(2): Dredging, dredged sediment discharge/placement, and monitoring of the dredging projects using the Dredging Quality Management (DQM) system shall be implemented for this permit when the project activity is using dredging equipment. The permittee's DQM system must have been certified by the National DQMSupport Center (DQM Center) within one calendar year prior to the initiation of the dredging/discharge/placement of sediments. The permittee is responsible for ensuring that the DQM system is operational throughout the dredging and discharge/placement of sediments, and that the project data is submitted to the DQM Center in accordance with the specifications provided at the DQM website. Questions regarding certification and/or additional information about DQM program should be addressed to the DQM Center at (877) 840-8024 and/or https://www.sam.usace.army.mil/Missions/Spatial-Data-Branch/Dredging-Quality-Management/.

42. **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). 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.

43. **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 United States Fish and Wildlife Services.

44. **Environmental Values:** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-7 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.

45. **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).

46. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.

47. **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.

48. **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-7. 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.

49. **Compliance Certification:** Every permittee who receives a written MDSPGP-7 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-7 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-7 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-7 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-7 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 or the address below:

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

50. **Transfer of MDSPGP-7 Verifications:** If the permittee sells the property associated with a MDSPGP-7 verification, the permittee may transfer the MDSPGP-7 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-7 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-7 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-7, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-7 permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ _____

(Transferee) (Date)

51. **Maintenance:** The permittee shall properly maintain the work or structure authorized by the MDSPGP-7 in good condition and in compliance with the terms and conditions of the MDSPGP-7 including maintenance to ensure public safety.

52. **Property Rights:** The MDSPGP-7 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.

53. **Modification, Suspension and Revocation:** The MDSPGP-7, 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-7 when they occur; however, the permittee is responsible to remain informed of any changes to the MDSPGP-7.

54. **Restoration:** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-7, 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.

55. **Special Conditions:** The Corps may impose special conditions on any project authorized under the MDSPGP-7, 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.

56. **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-7 and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the MDSPGP-7 verification may be revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.

57. **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-7, constitutes unauthorized work and is subject to an enforcement action by the Corps of the EPA. Furthermore, the MDSPGP-7 does not delegate any Section 404 enforcement or regulatory authority.

VIII. DURATION OF AUTHORIZATION:

A. Duration of Authorization:

1. Duration of MDSPGP-7 Authorization and Expiration Date:

Unless further modified, suspended, or revoked, this general permit will be in effect until five years from the effective date listed at the top of page 2. Upon expiration, the permit may be considered for renewal. Except as provided in Item 2 below, work authorized under this MDSPGP-7 must be completed before the MDSPGP-7 expires, is suspended, or revoked, whichever date occurs sooner. The Baltimore District will issue a public notice announcing any changes to the MDSPGP when they occur; however, the permittee is responsible to remain informed of any changes to this MDSPGP-7. If this MDSPGP-7 is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. The Corps may re-evaluate the terms and conditions of this MDSPGPG-7 at any time the Corps deems necessary to protect the public interest.

2. Grandfather Provision for Expiring MDSPGP-7:

Activities authorized under this MDSPGP-7 that have commenced or are under contract to commence the work in reliance upon this authorization, will have twelve months from the date of this MDSPGP-7 expiration, modification, or revocation to complete the activity under the terms and conditions of this MDSPGP-7. The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date.

B. Previously Authorized Activities:

1. Activities that were completed based on a previous written authorization from the Corps for applications made prior to the effective date of the MDSPGP-7, shall remain authorized, as specified in their original project-specific verification, and need no further reverification.

2. All activities that have received written project-specific verification under the MDSPGP-6, that have commenced or are under contract to commence the authorized work by September 30, 2026, have 12 months from the expiration date of the MDSPGP-6 to complete the work under the terms and conditions of the MDSPGP-6.

3. If the work cannot be completed within 12 months from the expiration date of the MDSPGP-6, reauthorization would be required:

- ***For Category A activities:*** No written re-authorization is required for previously verified Category A MDSPGP permits as long as the proposed project meets the

MDSPGP-7 terms and conditions AND impacts to jurisdictional aquatic resources have not changed. If the project no longer meets the Category A terms and conditions of MDSPGP-7 OR exceeds established MDSPGP-7 thresholds, authorization under an alternative permit will be required. Applicable Category A activities may be authorized using MDSPGP-7 Category A activity (j) *Previously Verified Category A Activities*. Those activities that no longer meet the MDSPGP-7 Category A terms, conditions, and limits must be reviewed by the Corps under the Category B review process.

- ***For Category B activities:*** Written re-authorization is required for previously verified Category B MDSPGP permits. If the project no longer meets the Category B terms and conditions of MDSPGP-7 OR exceeds established MDSPGP-7 thresholds, authorization under an alternative permit will be required.

4. Requests for modifications of previously authorized work under the MDSPGP-6 and/or special conditions are not grandfathered and must be submitted in writing for written reauthorization under the MDSPGP-7 or alternate Corps permit review procedures.

5. Activities authorized pursuant to 33 CFR part 330.3 (activities occurring before certain dates) are not affected by the MDSPGP-7.

*Note that this requirement applies to projects that have a valid state authorization that has not expired.

C. Changes to State Statutes, Regulations, or General Permits:

The Corps will review proposed changes to the state program statutes and regulations, including development of state general permits, to determine whether, and to what extent, the proposed changes will affect the MDSPGP-7. The Corps will determine whether or not to continue use of the MDSPGP-7 under the modified state statutes, regulations, or general permits based on the considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of the MDSPGP- 7, in accordance with DA Regulations.

D. Reporting And Evaluation:

1. The MDE will provide annual reports with data and statistics to the Baltimore District Engineer describing its implementation of the MDSPGP-7. These reports shall include information on the types and numbers of activities authorized under the MDSPGP-7, including specific types and numbers of activities authorized under Categories A and B; the impacts authorized; evaluation times; mitigation required and completed; the results of compliance, monitoring, and enforcement activities; and other data, as required. These reports will be available to the public.

2. The Corps, in consultation with MDE and the resource agencies, shall review

operational issues related to successful implementation of the MDSPGP-7 and shall coordinate and provide modifications to the operational procedures, and/or the MDSPGP-7, as appropriate.

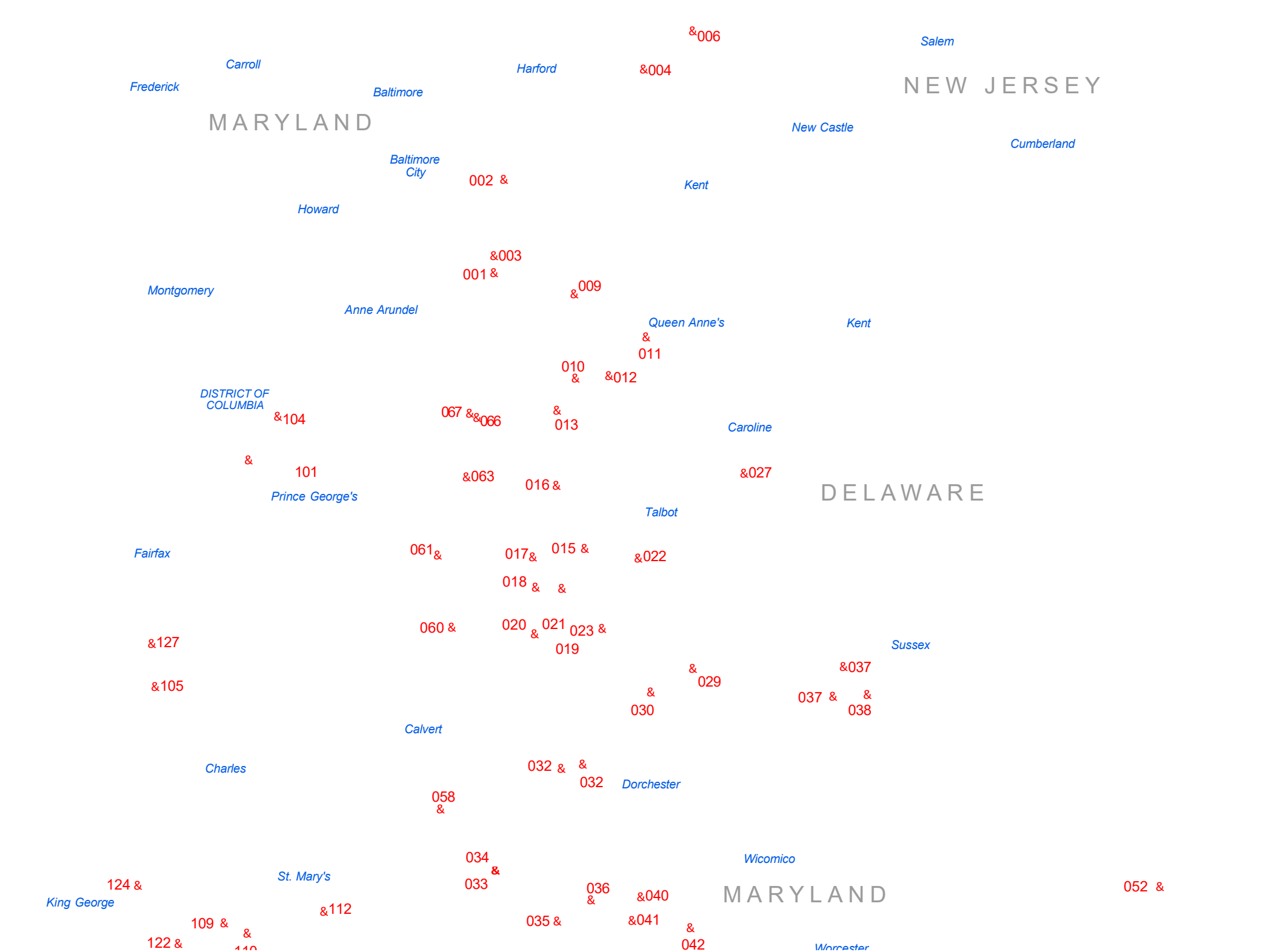
E. Modification, Suspension, Or Revocation:

The Corps District may suspend, modify, or revoke MDSPGP-7 authorization for any specific geographic area, class of activities, class of waters, or any case-specific verification under the MDSPGP-7, within the State of Maryland, by issuing a public notice or notifying the MDE and the permittee involved. The MDSPGP-7 will expire on September 30, 2031.

By Authority of the Secretary of Army:

William P. Seib
Chief, Operations Division

Appendix A: Federal Navigation Channel Map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Salem
Carroll
Harford
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Frederick
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NEW JERSEY
MARYLAND
New Castle
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002 &
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Wicomico
124 &
St. Mary's
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036
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MARYLAND
052 &
King George
&112
109 &
035 &
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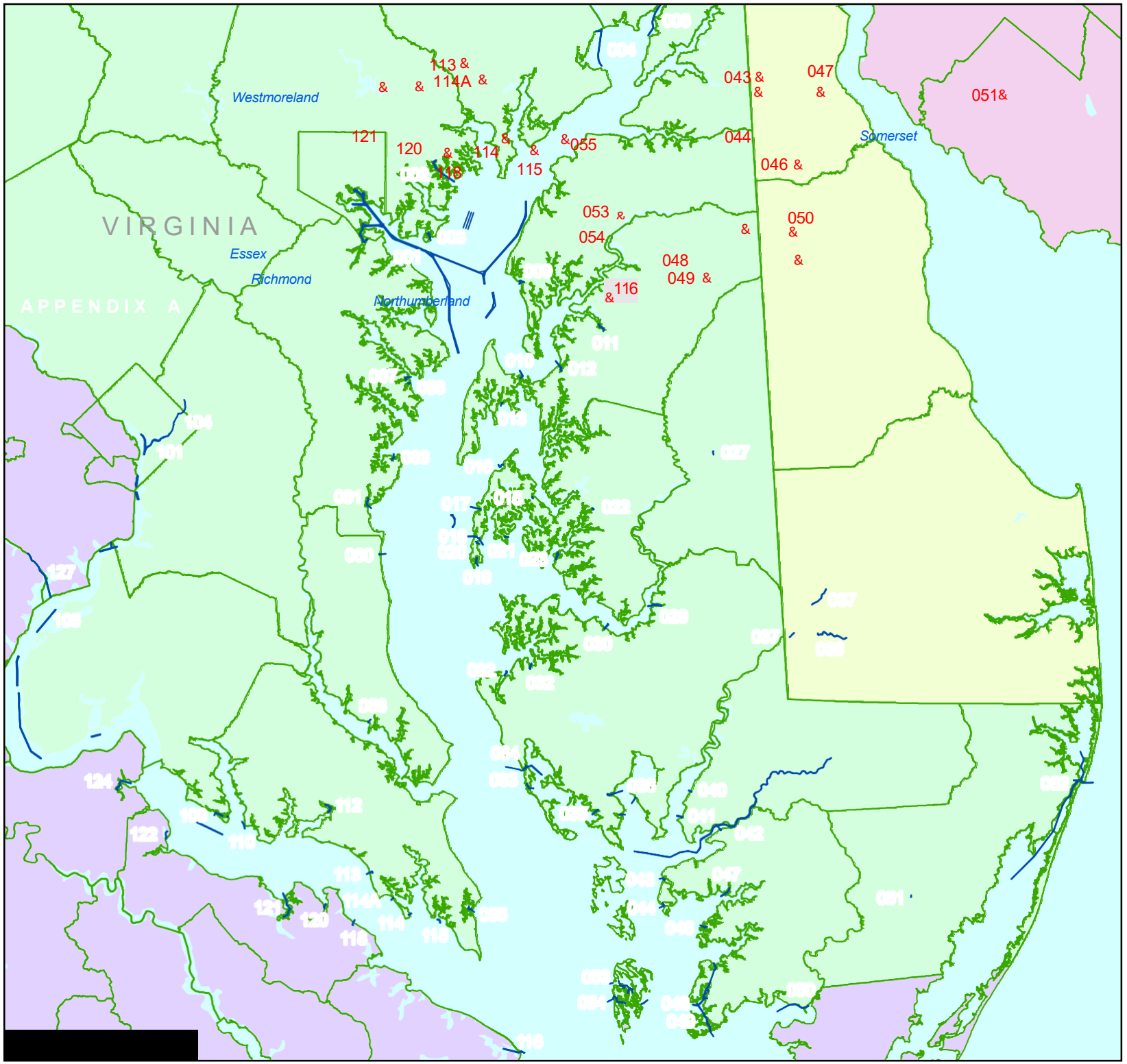
042
122 &
Worcester

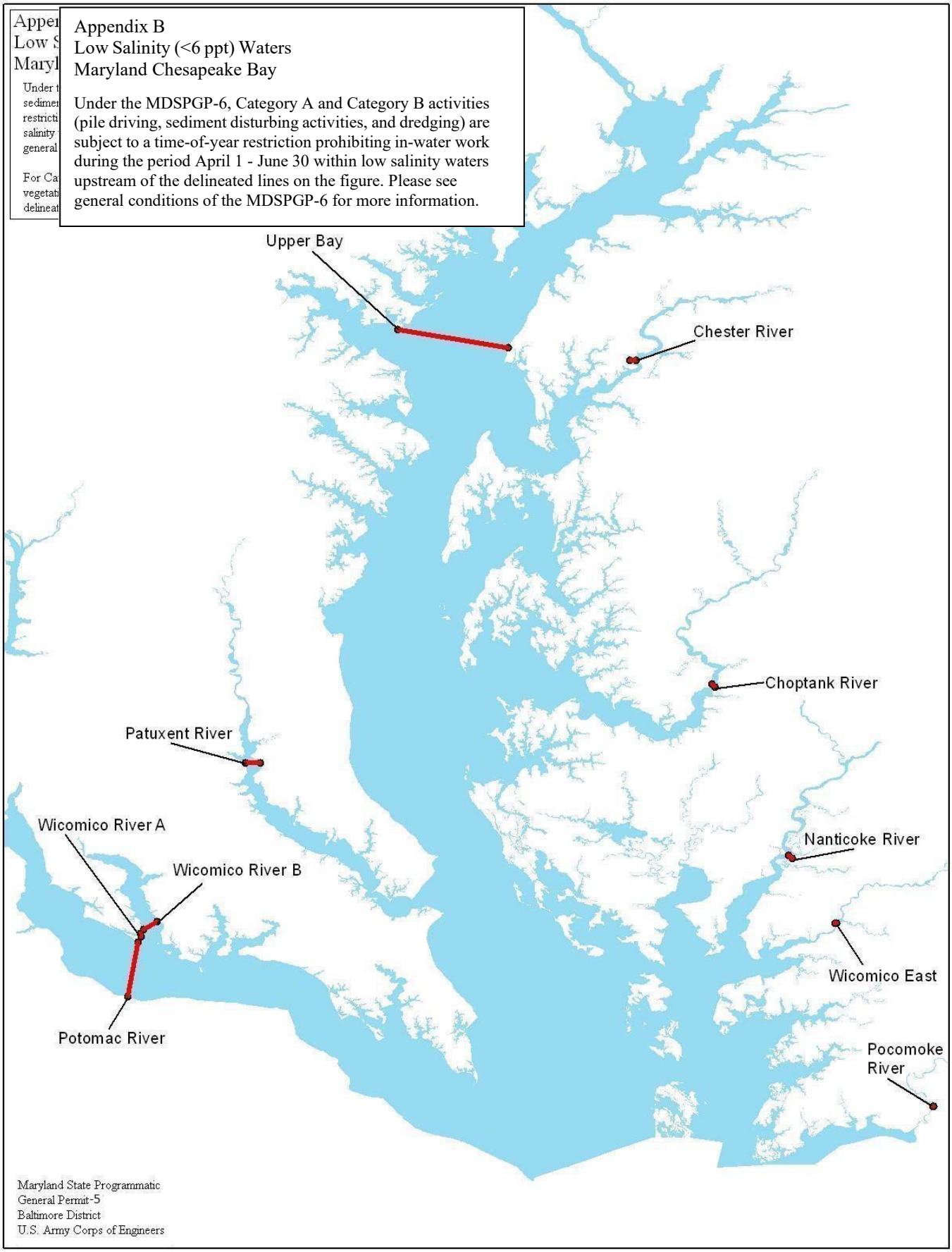


Federal Navigation Channel Map

001 -- Baltimore Harbor
002 -- Middle River
003 -- Shallow Creek
004 -- Susquehanna River Above and Below Havre DeGrace
006 -- Northeast River
009 -- Rock Hall Harbor
010 -- Chester River
011 -- Corsica River
012 -- Queenstown Harbor
013 -- Little Creek
015 -- St Michaels Harbor
016 -- Claiborne Harbor
017 -- Lowes Wharf
018 -- Knapps Narrows
019 -- Black Walnut Harbor
020 -- Tilghman Island
021 -- Neavitt Harbor
022 -- Tred Avon River
023 -- Town Creek
027 -- Choptank River
029 -- Warwick River
030 -- Cambridge Harbor
032 -- Madison Bay
032 -- Slaughter Creek
033 -- Honga River
034 -- Muddy Hook Tyler Cove
035 -- Duck Point Cove
036 -- Fishing Bay
037 -- Nanticoke River at Seaford
037 -- Nanticoke at Hawks Nest Shoal
038 -- Broad Creek
040 -- Nanticoke River at Bivalve
041 -- Nanticoke River at Nanticoke
042 -- Wicomico River
043 -- Upper Thorofare
044 -- Lower Thorofare
046 -- Goose Creek
047 -- St Peters Creek
048 -- Crisfield Harbor
049 -- Broad Creek
050 -- Pocomoke River
051 -- Shad Landing
052 -- Ocean City
053 -- Smith Island
054 -- Rhodes Point to Tylerton
055 -- St Jerome Creek
058 -- Nan Cove
060 -- Fishing Creek
061 -- Herring Bay Rockhold Creek
063 -- Parish Creek
66 -- Back Creek
67 -- Annapolis Harbor and Spa Creek
101 -- Washington Harbor
104 -- Anacostia River
105 -- Potomac River
109 -- Neale Sound
110 -- St Catherine Sound
112 -- Breton Bay
113 -- Herring Creek
114 -- Island Creek
114A -- St George Creek
115 -- Smith Creek
116 -- Little Wicomico River
118 -- Bonum Creek
120 -- Lower Machodoc Creek
121 -- Nomini Bay and Creek
122 -- Monroe Bay and Creek
124 -- Upper Machodoc Creek
127 -- Occoquan Creek

0 5 10 15 20 Miles

Appendix B: Low Salinity Waters in Maryland Chesapeake Bay Map


Appendix B
Low Salinity (<6 ppt) Waters
Maryland Chesapeake Bay
Under the MDSPGP-6, Category A and Category B activities (pile driving, sediment disturbing activities, and dredging) are subject to a time-of-year restriction prohibiting in-water work during the period April 1 - June 30 within low salinity waters upstream of the delineated lines on the figure. Please see general conditions of the MDSPGP-6 for more information.
Upper Bay
Chester River
Choptank River
Patuxent River
Wicomico River A
Wicomico River B
Nanticoke River
Wicomico East
Potomac River
Pocomoke River
Maryland State Programmatic
General Permit-5
Baltimore District
U.S. Army Corps of Engineers