



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

April 14, 2025

Operations Division

Maryland Department of Environment
Water & Science Administration
Regulatory Services Section
Attention: Water Quality Certification
Montgomery Park Business Center – Suite 430
1800 Washington Boulevard
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 #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 water quality certification under Section 401 of the Clean Water Act for the proposed issuance of the MDSPGP-7 that may result in a discharge in waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These excepted areas within Maryland waters identified above fall within the Corps Philadelphia District's regulatory geographic boundaries.

This letter serves as the Corps application for water quality certification (WQC) under Section 401 of the Clean Water Act for the MDSPGP-7 activities that would result in a discharge of dredged and/or fill material in waters of the United States within the State of Maryland.

The Baltimore District believes the proposed MDSPGP-7 meets the State water quality requirements. However, we recognize that you may need to add conditions or require individual review for some activities to ensure compliance with water quality requirements.

In accordance with the United States Environmental Protection Agency's current water quality certification regulations at 40 CFR part 121, the Baltimore District is providing the following information to comply with section 121.5(c) of those regulations:

(1) The point-of-contact for the proposed issuance of the MDSPGP-7 is Ms. Alexis Kolarz, 2 Hopkins Plaza, Baltimore, Maryland 21201, alexis.l.kolarz@usace.army.mil, or mobile: 443-786-8346.

(2) The proposed categories of activities to be authorized by the MDSPGP-7 are as follows:

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

a(1) Channel and Harbor Navigation Aids

a(2) State Regulatory Markers

a(3) Piers

a(4) Marina/Community Piers Reconfiguration

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

a(6) Mooring Buoys

a(7) Structures in Fleeting and Anchorage Areas

a(8) Temporary Recreational Structures

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

a(10) New Minor Dredging in Tidal Waters

b) Repair and Maintenance Activities

b(1) General Maintenance

- b(2) Armoring Bridges, Causeways, and Culverts
- b(3) Bulkhead Repair or Replacement, including Stone Toe Protection
- b(4) Maintenance of Existing Drainage Ditches
- c) Underground and Overhead Utility Line Activities
 - c(1) Utility Lines
 - c(2) Foundations for Overhead Utility Line Towers, Poles, Anchors, and Minor Attendant Features for Subsurface Utility Lines
 - c(3) Utility Access Roads
 - c(4) Utility Substations
- d) Linear Transportation Activities
- e) Fill Activities
 - e(1) Minor Nontidal Fills
 - e(2) Agricultural Activities
 - e(3) Soil Investigations, Scientific Measurement Devices, and Survey Activities
 - e(4) Dry Fire Hydrants
 - e(5) Clearing Debris and Windfalls
 - e(6) Reserved
 - e(7) Temporary Construction, Access, Stream Diversions, and Dewatering for Construction
 - e(8) Outfall Structures and Associated Intake Structures
 - e(9) Residential, Commercial, Institutional Development Activities and Recreational Facilities
 - e(10) Stormwater Management Facilities

e(11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized under the MDSPGP-7

f) Shoreline and Stream Bank Stabilization Activities

f(1) Tidal Revetments and other Tidal Shoreline Erosion Control Structures

f(2) Living Shorelines/Beach Nourishment

f(3) New Bulkheads, including Stone Toe Protection f(4) Nontidal Bank Stabilization Activities

g) Return Water from Upland Contained Disposal Areas

h) Private Landowner Oyster Gardening

i) Emergency Situations

j) Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems (MS4) Activities

j(1) Retrofits of Existing Stormwater Management Facilities

j(2) Nontidal Stream and Wetland Restoration and Enhancement Activities Associated with Acceptable TMDL/MS4 Watershed Strategies

(3) Enclosed is a copy of the text of the proposed MDSPGP-7 Draft Permit (Enclosure 1).

(4) A table that provides estimates of the numbers of times each of the proposed MDSPGP-7 activities that may result in a discharge into waters of the United States is outlined in Element g. in the enclosed "Key Elements under Maryland Regulation for a Request/Application for a CWA 401 WQC" (Enclosure 2). These estimates reflect the number of discharges anticipated to be authorized by each activity of the proposed MDSPGP-7 annually.

(5) A pre-filing meeting request was submitted to your office on September 19, 2024. A copy of the pre-filing meeting request is enclosed (Enclosure 3). A pre-filing meeting was held November 20, 2024.

(6) The Baltimore District hereby certifies that all information contained herein is true, accurate, and complete to the best of its knowledge and belief.

(7) The Baltimore District hereby requests that the certifying authority review and take action on this 401-water quality certification request within the applicable reasonable period of time (i.e., 192 days).

In accordance with the Corps' regulations at 33 CFR 330.4(c), if you deny water quality certification for certain activities authorized by the proposed MDSPGP-7, then the Corps will deny without prejudice authorization for those activities. Anyone wanting to perform such activities must first obtain an activity-specific water quality certification or waiver thereof from your office before proceeding under the MDSPGP-7.

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.

Sincerely,

Alexis Kolarz
Project Manager
Regulatory Branch

Enclosures

To identify how we can better serve you, we need your help. Please take the time to fill out our customer service survey at: <https://regulatory.ops.usace.army.mil/customer-service-survey/>



U.S. Army Corps of Engineers

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

Maryland State Programmatic General Permit-7

TABLE OF CONTENTS

I.	AUTHORITIES:	5
A.	Federal Permit Authorities, Roles, and Responsibilities:	5
B.	State Authorities:	6
C.	Related Laws:	6
II.	SCOPE OF ACTIVITIES:	6
A.	Activities Authorized by the MDSPGP-7:	6
B.	Activities Not Authorized by the MDSPGP-7:	7
C.	General Permit Review Categories:	8
D.	Project Criteria Requiring Category B Review:	9
E.	Alternate Corps Permit Review:	11
III.	APPLICATION SUBMITTAL AND REVIEW PROCESS:	11
A.	Federal, State, and Local Approvals:	15
B.	MDSPGP-7 Verification Procedures (when an application is required):	16
1.	Category A (Corps Review Not Required):	16
2.	Category B (Corps Review Required):	16
3.	Agency Objection:	20
4.	Alternate Corps Permit Review:	20
5.	Corps Discretionary Authority:	20
IV.	MDSPGP-7 CATEGORIES:	20
A.	Description of MDSPGP-7 Authorized Activities:	21
1.	Category A and Category B Activities:	21
a)	Boating and Navigation-Related Projects, Structures, and Activities:	21
a(1)	Channel and Harbor Navigation Aids:	21
a(2)	State Regulatory Markers:	21
a(3)	Piers:	22
a(4)	Marina/Community Piers Reconfiguration:	26
a(5)	Boat Ramp Construction, Repair, Expansion, and Replacement:	27
a(6)	Mooring Buoys:	28
a(7)	Structures in Fleeting and Anchorage Areas:	29
a(8)	Temporary Recreational Structures:	30
a(9)	Maintenance Dredging Of Previously Authorized Dredged Areas In Tidal Waters:	31
a(10)	New Minor Dredging in Tidal Waters:	33
b)	Repair and Maintenance Activities:	35
b(1)	General Maintenance:	35
b(2)	Armoring Bridges, Causeways, and Culverts:	39
b(3)	Bulkhead Repair or Replacement, Including Stone Toe Protection:	41

b(4)	Maintenance of Existing Drainage Ditches:	43
c)	Underground And Overhead Utility Line Activities:	45
c(1)	Utility Lines:	45
c(2)	Foundations for Overhead Utility Line Towers, Poles, Anchors, and Minor Attendant Features for Subsurface Utility Lines:	48
c(3)	Utility Access Roads:	50
c(4)	Utility Substations:	51
d)	Linear Transportation Activities:	52
e)	Fill Activities:	54
e(1)	Minor Nontidal Fills:	54
e(2)	Agricultural Activities:	55
e(3)	Soil Investigations, Scientific Measurement Devices, and Survey Activities:	57
e(4)	Dry Fire Hydrants:	59
e(5)	Clearing Debris and Windfalls:	59
e(6)	Reserved:	60
e(7)	Temporary Construction, Access, Stream Diversions, and Dewatering for Construction: 61	
e(8)	Outfall Structures And Associated Intake Structures:	62
e(9)	Residential, Commercial, Institutional Development Activities and Recreational Facilities: 63	
e(10)	Stormwater Management Facilities:	66
e(11)	Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized Under the MDSPGP-7:	68
f)	Shoreline and Stream Bank Stabilization Activities:	72
f(1)	Tidal Revetments and Other Tidal Shoreline Erosion Control Structures:	73
f(2)	Living Shorelines/Beach Nourishment:	75
f(3)	New Bulkheads, Including Stone Toe Protection:	79
f(4)	Nontidal Bank Stabilization Activities:	81
g)	Return Water from Upland Contained Disposal Areas:	83
h)	Private Landowner Oyster Gardening:	83
i)	Emergency Situations:	85
j)	Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems (MS4) Activities:	91
j(1)	Retrofits Of Existing Stormwater Management Facilities:	91
j(2)	Nontidal Stream And Wetland Restoration And Enhancement Activities Associated With An Acceptable TMDL/MS4 Watershed Strategy:	92
V.	DEFINITIONS:	97
VI.	ALTERNATE CORPS PERMIT REVIEW:	104
VII.	GENERAL CONDITIONS:	105
VIII.	DURATION OF AUTHORIZATION:	126

A. Duration of Authorization:	126
1. Duration of MDSPGP-7 Authorization and Expiration Date:	126
2. Grandfather Provision for Expiring MDSPGP-7:	126
B. Previously Authorized Activities:	126
C. Changes to State Statutes, Regulations, or General Permits:	127
D. Reporting And Evaluation:	127
E. Modification, Suspension, Or Revocation:	128
Appendix A: Federal Navigation Channel Map	129
MARYLAND	130
NEW JERSEY	130
DELAWARE	130
Appendix B: Low Salinity Waters in Maryland Chesapeake Bay Map	132

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 MDE's 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 losses 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 proposed 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 MDE's 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 is 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 maintain 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/coastalatlases/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 preconstruction 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 1 μ Pa 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 may be 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 be 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 work (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 detention 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 note 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 nontidal 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).

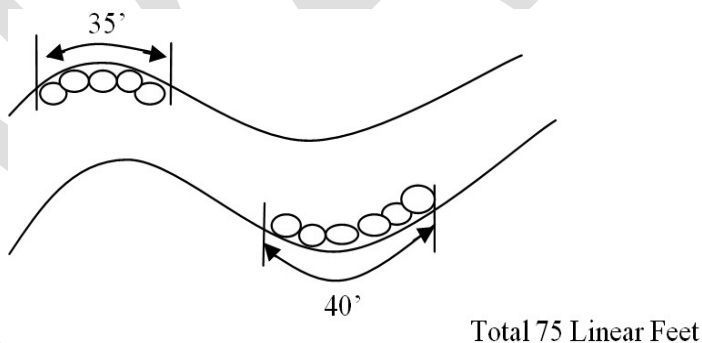
Independent Utility: A test to determine what constitutes a single and complete non-linear project for the MDSPGP-7. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend 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.

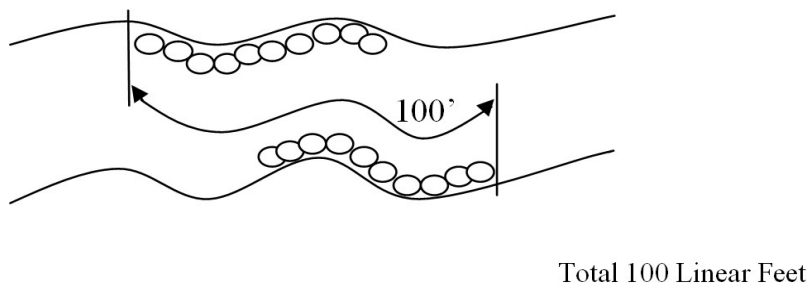
Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

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.

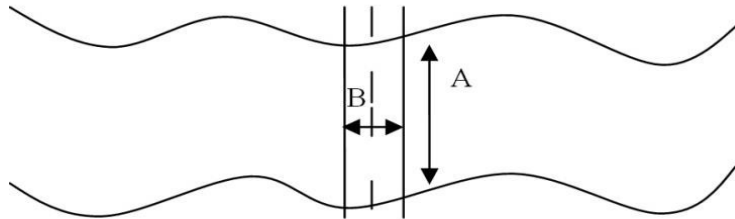


b. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact shall be measured along the centerline of the stream.



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:

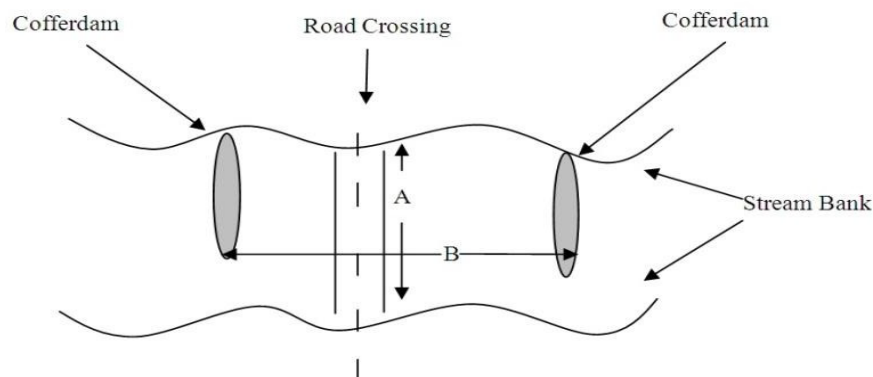
Road Crossing



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.

A (width) or B (length) whichever is greater.



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 USCG's 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 Codey.

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 FWS's 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 foreseeable 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.

I. 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/coastalatlus/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 MDSPGP-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

Appendix B: Low Salinity Waters in Maryland Chesapeake Bay Map

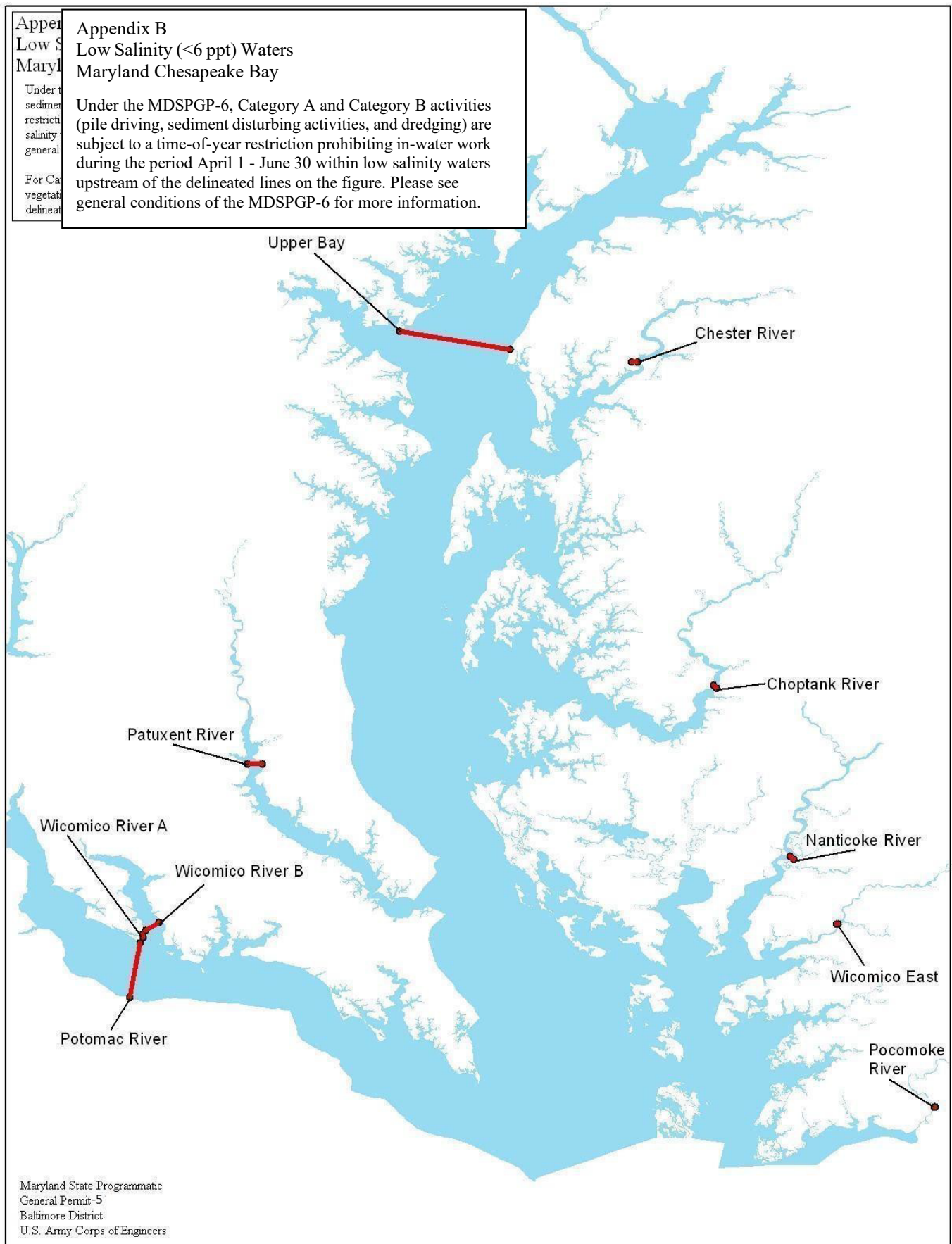
Appendix B
Low Salinity (<6 ppt) Waters
Maryland Chesapeake Bay

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.

For Category A activities, the delineated lines are shown in red. For Category B activities, the delineated lines are shown in black.

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.



Maryland State Programmatic
General Permit-5
Baltimore District
U.S. Army Corps of Engineers



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF
ENGINEERS REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201-2930

**Key Elements under Maryland Regulation for a Request/Application for a CWA
401 WQC**

1. In accordance with 40 C.F.R 121.5 and COMAR 26.08.02.10 you shall submit to the Department a request that includes:

(a) Identify the project proponents and a point of contact. Name, address, phone number, email address of the applicant and the authorized agent or contact (as applicable).

U.S. Army Corps of Engineers, Baltimore District 2 Hopkins Plaza, Baltimore, MD 21201-2930. POC email: alexis.l.kolarz@usace.army.mil.

(b) Identify the applicable federal license or permit. For example, include the assigned U.S. Army Corps of Engineers and Maryland Department of Environment tracking numbers along with a copy of the Joint Permit Application (JPA). The JPA shall be included with the Request for a Water Quality Certification, as well as any supplemental documents that address all of the following not contained in the JPA:

Corps Number: NAB-2024-00009
AI#: 168223
Tracking#: 2024-62002

(c) The project site address, including coordinates in degrees, minutes, seconds, 12 digit HUC no., Watershed name.

U.S. Army Corps of Engineers, Baltimore District Maryland State Programmatic General Permit-7 (MDSPGP-7) reissuance is for multiple applicants at multiple location within the state of Maryland over a five-year period. The only excluded Maryland waters of the MDSPGP-7 are 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 Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal tributaries. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's Regulatory geographic boundaries.

(d) The name(s) and address(es) of adjacent property owners:

U.S. Army Corps of Engineers, MDSPGP-7 reissuance is for multiple applicants at multiple location within the state of Maryland over a five-year period.

(e) Signed Public Notice Billing Form:

N/A government agency.

(f) Identify the proposed project. Description of the facility or activity:

On December 16, 2024, the Baltimore District issued Special Public Notice (SPN) #24-38 announcing the regional conditions and suspensions of specific 2017 Nationwide Permits (NWP) in Maryland that are duplicated by the MDSPGP-5, the public notice for the next round of NWPs has not yet been issued, but the same actions will be considered duplicative. 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. 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 categories of activities for the MDSPGP-6 are as follows:

A. MDSPGP-6 Authorized Activity Index:

1. Category A and Category B Activities:

a. Boating and Navigation Related Projects, Structures, and Activities:

a(1) Channel and Harbor Navigation Aids

a(2) State Regulatory Markers

- a(3) Piers
- a(4) Marina/Community Piers Reconfiguration
- a(5) Boat Ramp Construction, Repair, and Expansion
- a(6) Mooring Buoys
- a(7) Structures in Fleeting and Anchorage Areas
- a(8) Temporary Recreational Structures
- a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters
- a(10) New Minor Dredging in Tidal Waters

b. Repair and Maintenance Activities:

- b(1) General Maintenance
- b(2) Armoring Bridges, Causeways, and Culverts
- b(3) Bulkhead Repair or Replacement, including Stone Toe Protection
- b(4) Maintenance of Tidal Roadside Ditches

c. Underground and Overhead Utility Line Activities:

- c(1) Utility Lines
- c(2) Foundations for Overhead Utility Line Towers, Poles, Anchors and Minor Attendant Features for Subsurface Utility Lines
- c(3) Utility Access Roads
- c(4) Utility Substations

d. Linear Transportation Activities

e. Fill Activities:

- e(1) Minor Nontidal Fills

- e(2) Agricultural Activities
- e(3) Soil Investigations, Scientific Measurement Devices, and Survey Activities
- e(4) Dry Fire Hydrants
- e(5) Clearing Debris and Windfalls
- e(6) Reserved
- e(7) Temporary Construction Access, Stream Diversion, and Dewatering for Construction
- e(8) Outfall Structures and Associated Intake Structures
- e(9) Residential, Commercial, Institutional Development Activities and Recreational Facilities
- e(10) Stormwater Management Facilities
- e(11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized under the MDSPGP-7
- f. Shoreline and Stream Bank Stabilization Activities:**
 - f(1) Tidal Revetments and Other Tidal Shoreline Erosion Control Structures
 - f(2) Living Shorelines/Beach Nourishment
 - f(3) New Bulkheads, including Stone Toe Protection
 - f(4) Nontidal Bank Stabilization Activities
- g. Return Water from Upland Contained Disposal Areas**
- h. Private Landowner Oyster Gardening**
- i. Emergency Situations**
- j. Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems(MS4) Activities**

- j(1) Retrofits Of Existing Stormwater Management Facilities
- j(2) Nontidal Stream and Wetland Restoration And Enhancement Activities Associated With an Acceptable TMDL/MS4 Watershed Strategy

(g) A plan showing the proposed activities to scale including: The location(s) and boundaries of the activities; The location(s), name(s), identification number(s), and extent of all potentially affected surface water bodies, including wetlands.

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.

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.

Any proposed construction would adhere to approved sediment and erosion control BMPs including time of year restrictions when appropriate. As with the existing MDSPGP-6, plans and descriptions for activities proposed to be authorized under the re-issuance 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.

In order to estimate the number of discharge locations the MDSPGP-7 could potentially affect data was extracted from the Operations and Maintenance Business Information Link Regulatory Module (ORM) which documents each Corps issued permit. Data

encompassing commencement of the MDSPGP-6 permit (November 1, 2021) to June 30, 2024, was compiled to capture impact size and number of permits issued for each category for the purpose of analyzing the most current information.

Table 1: USACE issued Category A Authorization during 11/01/2021-06/30/2024 Under the MDSPGPG-6

Activity	<0.1 Acre	0.1-0.25 Acre	0.25-0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acres	>1.0 Acres	Total
a(1) Channel and harbor navigation aids	0	0	0	0	0	0	0
a(2) State Regulatory Markers	0	0	0	0	0	0	0
a(3) Piers	50	0	0	0	0	0	50
a(4) marina/community piers reconfiguration	6	0	0	0	0	0	6
a(5) Boat Ramp Construction repair and expansion	6	0	0	0	0	0	6
a(6) Mooring Buoys	0	0	0	0	0	0	0
a(7) Structures in Fleeting and Anchorage Areas	0	0	0	0	0	0	0
a(8) Temporary recreational structures	0	0	0	0	0	0	0
a(9) maintenance dredging of previously authorized dredged areas in tidal waters	15	4	1	0	0	0	20
a(10) New Minor Dredging in Tidal Waters	18	0	0	0	0	0	18
b(1) General Maintenance	54	5	1	3	0	0	63
b(2) Armoring bridges, causeways and culverts	0	0	0	0	0	0	0
b(3) bulkhead repair or replacement, including stone toe protection	32	1	1	0	1	0	35
b(4) Maintenance of Tidal Roadside Ditches	1	1	0	0	0	0	2
b(5) Maintenance of Mosquito Control Ditches	0	0	0	0	0	0	0
b(6) Culvert Pipe Grouting/ Sealing and Joint Repairs	0	0	0	0	0	0	0
c(1) Utility Lines	8	0	0	0	0	0	8

Activity	<0.1 Acre	0.1-0.25 Acre	0.25- 0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acres	>1.0 Acres	Total
c(2) Foundations for Overhead Utility Line Towers, Poles, Anchors, and Minor Attendant Features for Subsurface Utility Lines	7	0	0	0	0	0	7
c(3) Utility Access Roads	0	0	0	0	0	0	0
d linear transportation activities	6	0	0	0	0	0	6
e(1) Minor Nontidal Fills	25	1	1	0	0	0	27
e(2) Agricultural Activities	0	0	0	0	0	0	0
e(3) Soil Investigations, Scientific Measurements Device, and Survey Activities	6	0	0	0	0	0	6
e(4) Dry Fire Hydrants	0	0	0	0	0	0	0
e(5) Clearing Debris and Windfalls	0	0	0	0	0	0	0
e(6) Reserved	0	0	0	0	0	0	0
e(7) Temporary Construction Access, Stream Diversion, and Dewatering	28	4	0	0	0	0	32
e(8) Outfall Structures and Associated Intake Structures	10	0	0	0	0	0	10
e(9) Residential, Commercial, and Institutional Development Activities	12	0	0	0	0	0	12
e(10) New Stormwater Management Facilities	0	0	0	0	0	0	0
e(11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resources Impacts Authorized under the MDSPGP-6	0	0	0	0	0	0	0
f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other Than Revetments	30	3	0	0	0	0	33
f(2) Living	15	3	0	0	0	0	18

Activity	<0.1 Acre	0.1-0.25 Acre	0.25- 0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acres	>1.0 Acres	Total
Shorelines/Beach Nourishment							
f(3) New Bulkheads, including Stone Toe Protection	2	1	0	0	0	0	3
f(4) Nontidal Bank Stabilization Activities	17	1	0	0	0	0	18
g return water from upland contained disposal areas	0	0	0	0	0	3	3
h Private landowner oyster gardening	0	0	0	0	0	0	0
TOTAL	348	24	4	3	1	3	383

**Table 2: USACE issued Category B Authorization during 11/01/2021-06/30/2024
Under the MDSPGPG-6**

Activity	<0.1 Acre	0.1-0.25 Acre	0.25- 0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acre	>1.0 Acres	Total
a(1) Channel and harbor navigation aids	0	0	0	0	0	0	0
a(2) State Regulatory Markers	0	0	0	0	0	0	0
a(3) Piers	267	0	0	0	0	0	267
a(4) marina/community piers reconfiguration	19	1	4	0	0	0	24
a(5) Boat Ramp Construction repair and expansion	31	1	0	0	0	0	32
a(6) Mooring Buoys	0	0	0	0	0	0	0
a(7) Structures in Fleeting and Anchorage Areas	0	0	0	0	0	0	0
a(8) Temporary recreational structures	2	0	0	0	0	0	2
a(9) maintenance dredging of previously authorized dredged areas in tidal waters	32	9	8	2	2	14	67
a(10) New Minor Dredging in Tidal Waters	37	9	2	0	0	0	48
b(1) General Maintenance	115	5	9	4	3	5	141
b(2) Armoring bridges, causeways and culverts	2	0	1	0	0	0	3
b(3) bulkhead repair or replacement, including stone toe protection	87	1	0	0	0	0	88
b(4) Maintenance of Tidal Roadside Ditches	15	4	2	5	0	1	27
b(5) Maintenance of Mosquito Control Ditches	1	4	0	0	0	0	5
b(6) Culvert Pipe Grouting/ Sealing and Joint Repairs	2	0	1	0	0	0	3
c(1) Utility Lines	119	10	9	2	1	6	147
c(2) Foundations for Overhead Utility Line Towers, Poles, and Anchors	9	0	0	0	0	0	9

Activity	<0.1 Acre	0.1-0.25 Acre	0.25-0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acre	>1.0 Acres	Total
c(3) Utility Access Roads	11	2	1	0	1	0	15
d linear transportation activities	113	16	3	1	0	0	133
e(1) Minor Nontidal Fills	21	5	1	1	0	0	28
e(2) Agricultural Activities	2	0	0	0	0	0	2
e(3) Soil Investigations, Scientific Measurement Devices, and Survey Activities	9	0	0	0	0	0	9
e(4) Dry Fire Hydrants	0	0	0	0	0	0	0
e(5) Clearing Debris and Windfalls	0	0	0	0	0	0	0
e(6) Reserved	0	0	0	0	0	0	0
e(7) Temporary Construction Access, Stream Diversion, and Dewatering	14	5	3	0	2	5	29
e(8) Outfall Structures and Associated Intake Structures	0	0	0	0	0	0	0
e(9) Residential, Commercial, and Institutional Development Activities	138	34	9	1	0	0	182
e(10) New Stormwater Management Facilities	2	0	1	0	0	0	3
e(11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resources Impacts Authorized under the MDSPGP-6	8	3	1	1	0	0	13
f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other Than Revetments	130	21	5	0	0	0	157
f(2) Living Shorelines/Beach Nourishment	91	42	19	0	0	0	152

Activity	<0.1 Acre	0.1-0.25 Acre	0.25-0.50 Acre	0.50-0.75 Acre	0.75-1.0 Acre	>1.0 Acres	Total
f(3) New Bulkheads, including Stone Toe Protection	12	1	0	0	0	0	13
f(4) Nontidal Bank Stabilization Activities	45	8	8	0	0	0	61
g return water from upland contained disposal areas	0	0	0	0	0	0	0
h Private landowner oyster gardening	0	0	0	0	0	0	0
TOTAL	1344	183	87	17	10	31	1672

The data compiled comprises 2 years and 7 months, in that time USACE issued 383 Category A permits of which 348 (91%) were less than 0.1 acre and 1,672 Category B permits of which 1,344 (80%) were less than 0.1 acre. Total USACE issued a total of 2,055 permits under the MDSPGP-6, averaged over the extracted timeline it is estimated that USACE issues approximately 822 per year. It can be inferred that the MDSPGP-7 would authorize a comparable volume of permits, with the substantial majority pertaining to minor impact projects resulting in permanent impacts of less than 0.1 acre.

It should be noted that the following are new categories under the MDSPGP-7: (i) Emergency Situations; (k) Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems (MS4) Activities which includes k(1) Retrofits Of Existing Stormwater Management Facilities, and k(2) Nontidal Stream and Wetland Restoration And Enhancement Activities Associated with An Acceptable TMDL/MS4 Watershed Strategy. These are new categories and therefore has no past MDSPGP-6 data to draw from to make predictions of future discharges. As an alternative to the current emergency procedures, Action (i) is a feasible option. Given that existing emergency situations are generally resolved via after-the-fact permits issued under the current MDSPGP, it is not anticipated that the number of permits within this category will increase. Instead, a transition to this specific category from potentially numerous other categories is foreseen.

Category (k) is proposed as the successor to the Regional General Permit for Chesapeake Bay Total Maximum Daily Load (TMDL) Activities, which is set to expire on August 31, 2025. Since October 1, 2020, the USACE has issued approximately 135 permits under the current TMDL regional general permit. It can therefore be predicted that approximately 30 permits could be added per year due to the introduction of the TMDL category. It should be noted that MDE's prior authorization of a conditional Water Quality Certification for the 2020 TMDL RGP applicants is relevant because the draft MDSPGP-7 imposes comparable restrictions and special conditions. Consequently, no additional environmental impacts are anticipated; instead, proposed impacts approved by the TMDL RGP would be covered under the MDSPGP-7.

(h) Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters; A description of any discharge which may result from the conduct of any activity including:

(i) Biological, chemical, thermal or other characteristics of the potential discharge;

a. A description of any other aspect associated with construction and operation of the activity that would affect the chemical composition, temperature, flow, or physical aquatic habitat of the surface water:

The MDSPGP-7 has both general conditions as well as activity specific conditions to for each activity type outlined in the permit. Table 3 summarizes the potential discharge type for each action as well as activity specific limits and requirements. All specific general and activity restrictions may be found attached to the draft permit.

Table 3: Potential Discharge and Activity Limits by Category

Activity	Potential Discharge Type	Authorized Activity Limits and Requirements
a(1) Channel and harbor navigation aids	None	NA
a(2) State Regulatory Markers	None	NA
a(3) Piers	Biological	Impact size restrictions, sensitive area restrictions, piling number and sizing restrictions, size restrictions over vegetated wetlands
a(4) Marina/Community Piers and Reconfiguration	Biological	Sizing restrictions, activity restrictions
a(5) Boat Ramp Construction, Repair, Expansion and Replacement	Biological, chemical, thermal	Impact size restrictions, material restrictions
a(6) Mooring Buoys	None	Sensitive area restrictions
a(7) Structures in Fleeting and Anchorage Areas	None	NA
a(8) Temporary recreational structures	None	NA
a(9) maintenance dredging of previously authorized dredged areas in tidal waters	Biological, chemical, thermal	Impact size restrictions, time of year restrictions, disposal guidelines, water depth guidelines, silt fencing and turbidity curtains requirements, buffer requirements
a(10) New Minor Dredging in Tidal Waters	Biological, chemical, thermal	Impact size restrictions, time of year restrictions, disposal guidelines, water depth guidelines
b(1) General Maintenance	Biological, chemical, thermal	Impact size restrictions, material guidelines, flow requirements, locational guidelines, sensitive area restrictions, material disposal guidelines, construction guidelines

b(2) Armoring bridges, causeways and culverts	Biological, chemical, thermal	Impact size restrictions, material guidelines, flow requirements, locational guidelines, material disposal guidelines, construction guidelines
b(3) bulkhead repair or replacement, including stone toe protection	Biological, chemical, thermal	Impact size restrictions, material guidelines, flow requirements, locational guidelines, construction guidelines
b(4) Maintenance of Tidal Roadside Ditches	Biological	Impact size restrictions, time of year restrictions, equipment guidelines, wildlife guidelines
b(5) Maintenance of Mosquito Control Ditches	Biological, chemical	Impact size restrictions, material placement restrictions,
b(6) Culvert Pipe Grouting/ Sealing and Joint Repairs	Biological, chemical	Impact size restrictions, location guidelines, flow guidelines, construction guidelines
c(1) Utility Lines	Biological, chemical	Impact size restrictions, construction guidelines, locational restrictions, flow restrictions, species guidelines
c(2) Foundations for Overhead Utility Line Towers, Poles, and Anchors	Biological	Impact size restrictions, location guidelines, construction guidelines,
c(3) Utility Access Roads	Biological	Impact size restrictions including temporary thresholds, construction guidelines, location guidelines
d linear transportation activities	Biological, thermal	Impact size restrictions, stabilization requirements, temporary impact requirements
e(1) Minor Nontidal Fills	Biological, thermal, chemical	Impact size restrictions, project type restrictions
e(2) Agricultural Activities	Biological	Impact size restrictions, locational restrictions,
e(3) Soil Investigations, Scientific Measurement	Biological, thermal, chemical	Impact size restrictions, seismic restrictions, restoration guidelines

Devices, and Survey Activities		
e(4) Dry Fire Hydrants	Biological, chemical	Impact size restrictions, construction guidelines
e(5) Clearing Debris and Windfalls	Biological	Impact size restrictions, species conditions
e(6) Reserved	NA	NA
e(7) Temporary Construction Access, Stream Diversion, and Dewatering	Biological	Impact size restrictions, stream flow guidelines, construction guidelines,
e(8) Outfall Structures and Associated Intake Structures	Biological, chemical, thermal	Impact size restrictions, construction and location guidelines
e(9) Residential, Commercial, and Institutional Development Activities	Biological, chemical, thermal	Impact size restrictions, construction guidelines, locational guidelines, mitigation requirements
e(10) New Stormwater Management Facilities	Biological, chemical, thermal	Impact size restrictions

f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures Other Than Revetments	Biological, chemical	Impact size restrictions, mitigation requirements, construction guidelines, flow requirements
f(2) Living Shorelines/Beach Nourishment	Biological, chemical	Impact size restrictions, construction guidelines, stabilization guidelines, planting guidelines, grainsize requirements, location limitations
f(3) New Bulkheads, including Stone Toe Protection	Biological, chemical	Impact size restrictions, location limitations, material restrictions, construction guidelines
f(4) Nontidal Bank Stabilization Activities	Biological, chemical	Impact size restrictions, location limitations, material restrictions, construction guidelines, flow restrictions
g return water from upland contained disposal areas	Biological, chemical, thermal	Material guidelines, locational guidelines
h Private landowner oyster gardening	Biological, chemical	Material guidelines, locational guidelines, reporting requirements
Emergency Situations	Biological, chemical, thermal	Impact size restrictions, locational guidelines, construction guidelines
k(1) Retrofits of existing stormwater management facilities	Biological	Impact size restrictions
k(2) Nontidal Stream and Wetland Restoration and Enhancement Activities Associated with an Acceptable TMDL/MS4 Watershed Strategy	Biological	Impact size restrictions, monitoring requirements

b. The characteristics of the discharge

- **Flow rate (cfs)**
- **Potential chemical, physical, biological constituents**
- **Frequency (e.g., daily, hourly,)**
- **Duration**
- **Temperature (Celsius)**

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.

Furthermore, there are general conditions within the permit that attempt to minimize environmental impacts to flow rate, potential chemical, physical, biological constituents, and temperature such as:

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).

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.

(ii) The location or locations at which any discharge may enter navigable waters;

(a) Latitude and longitude (dd:mm:ss)

(b) An original or color copy/reproduction of a United States Geological Survey

Although exact descriptions and locations of discharges cannot be described at this time, the MDSPGP-7 would authorize 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.

(iii) Data supporting existing aquatic life use for each waterway; and

The MDSPGP-7 is a statewide permit intended to incorporate all Maryland waterways within the USACE's jurisdiction. Conditions within the permit are intended to avoid adverse environmental impacts to existing aquatic life within Maryland's waterways. The following **General Conditions are applicable to supporting existing aquatic life:**

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.

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.

Countersinking Pipes and Culverts: 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.

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.

(iv) Antidegradation alternatives analysis as applicable to Tier II waters

It is not anticipated that any project qualifying for under the MDSPGP-7 would have an adverse environmental impact to Tier II waters. MDSPGP-7 states that 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 or State may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal

degradation of water quality.

Relevant General Condition for all activities qualifying for the MDSPGP-7 are listed below:

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.

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. 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).

(v) The existing and designated use(s) that are potentially affected by the proposed activities

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

specific locations of proposed discharge; however an estimate of the number of discharges can be inferred from previous year's submissions. Table 2 summarizes all activities for a 2 year 7 month period, and Table 3 outlines potential impacts for each activity.

(i) Include a description, of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge; A descriptions, if applicable, of the function and operation of any equipment or facilities to treat any discharge and the degree of treatment to be attained. A description of any other aspect of associated with construction and operation of the activity that would affect the chemical composition, temperature, flow, or physical aquatic habitat of the surface water.

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 methods and means of discharge, but each permit submitted must provide proposed discharge locations and methods and would be reviewed by USACE and MDE.

In addition, relevant general conditions are in place to avoid and minimize discharge into wetlands and waterways. Relevant General conditions state:

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.

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 native wetland species. Temporary fill areas in streams shall be restored to original, pre-construction elevations and contours using native substrate materials.
- f. The application must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- g. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade.

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.

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.

(j) The date on which the activity will begin or end, if known, and the date or dates on which any discharge may occur.

The MDSPGP is proposed to be effective for five years and if approved would be active after the expiration of the current MDSPGP-6 on September 30, 2026 and remain in

place until September 30, 2031.

(k) A description, if applicable, of the methods proposed or employed to monitor the quality and characteristics of any discharge.

There are several conditions within the proposed MDSPGP-7 that are employed to monitor the quality and characteristics of discharge. Per the proposed general conditions of the MDSPGP-7:

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.

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>.

(l) A specific and detailed mitigation plan as applicable for projects requiring mitigation

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.

(m) Include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received; Other related permits issued or required (Individual 404 Permit, Nationwide Permit No., Section 10 Permit, Erosion and Sediment Control Plan Approval, NPDES permit (including stormwater permits) Regional permits.

The MDSPGP-7 is being coordinated with multiple federal agencies, but no other permits are required for the MDSPGP-7. The Army Corps of Engineers has sent agency coordination and the draft permit pertaining to the MDSPGP-7 to the following agencies:

- Environmental Protection Agency
- National Ocean and Atmospheric Administration
- National Marine Fishery service Greater Atlantic Regional Fisheries Office Greater Habitat Conservation Division
- Maryland Department of Natural Resources: interagency coordination encouraged for listed species
- Maryland Department of the Environment
- The following tribes were solicited for comment: Absentee-Shawnee Tribe of Oklahoma, Catawaba Indian Nation, Cayuga Nation, Cherokee Nation, Chickahominy Indian Tribe, Chickahominy Indian Tribe Eastern Division, Delaware Tribe of Indians, Delaware Nation, Eastern Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Mattaponi Indian Nation, Muscogee Creek Nation, Nansemond Indian Nation, Narragansett Indian Tribe, Oneida Indian Nation, Oneida Nation of Wisconsin,

Oneida Indian Nation, Onondaga Nation, Osage Nation, Pamunkey Indian Tribe, Rappahannock Tribe, Seneca Nation of Indians, Seneca Cayuga Tribe of Oklahoma, Shawnee Tribe, Shinnecock Nation, Stockbridge-Munsee Community Band of Mohican Indians, Saint Regis Mohawk Tribe, Tonawanda Band of Seneca Indians of New York, Tonawanda Band of Seneca Indians of New York, Tuscarora Nation, United Keetoowah Band of Cherokee Indians and Upper Mattaponi Indian Tribe

(n) Any other information for evaluation of the impact of the activity on water quality. This may include quantitative analysis to demonstrate that the proposed activity may not violate State water quality standards.

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. All authorized work will adhere to the appropriate time of year restrictions and followed approved sediment and erosion control best management practices. Areas where MDE typically does not exert jurisdiction (e.g., ephemeral streams and online stormwater management retrofits) may also not be subject to Corps evaluation by the proposed implementation date of the re-verification. Work in upland areas, including riparian buffers, are not subject to Corps jurisdiction. Under the proposed re-verification, temporary impacts (e.g., construction access on matting) will be restored to preconstruction conditions and therefore the MDSPGP-7 has not proposed temporary impact limit for any activity except Temporary Construction, Access, Stream Diversions, and Dewatering for Construction

(o) Include documentation that a pre-riling meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request

A prefilming meeting was requested on September 19, 2024 and held on November 20, 2024. In attendance was Alexis Kolarz (USACE), Beth Bachur (USACE), Tammy Roberson (MDE), Alex Vazquez (MDE), and Danielle Spendiff (MDE).

(p) Contain the following statement: The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief”; and

(q) Contain the following statement: ‘The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable period of time.

The Army Corps of Engineers hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and believe. The project proponent hereby requests that the certifying authority review and take action on this CWA 401 Certification.

Pre-Filing Meeting Request

All fields with an asterisk * are required unless noted otherwise.

Use the **SUBMIT by EMAIL** button to send your request. READ the sending instructions.

Optionally, save this form, attach it to an email, and return it to: wetlandspreap.mde@maryland.gov

Project Location

Complete all of the following project location fields

<http://www.latlong.net>

Site Address

If a site address is not available, be sure to describe the project location in the available field below.

* Latitude / * Longitude

* County

* ADC Map

(ADC map coordinates not required for Allegany, Garrett or Somerset counties)

Describe project location

(eg., 200 yards NE of Rte 50 / Tempo Road)
Not needed if exact address is shown above.

House, lot, or location number

Street name

* City

* State

* Zip

Select a county

Map#

Alpha

Number

Edition

Property Owner

Mailing address may be different from Project location address.

* At least one telephone

* Full name

* Mailing address

* City, State Zip

Telephone Home

Work

Cell

Email

Primary Contact

* At least one telephone

* Full name

Company

* Mailing address

* City, State Zip

Telephone Work

Cell

Email

Project

* This project request is:

(Place an 'x' in the box for WQC)

Description of Project

Include the following (if known):
ACOE Category, ACOE reviewer,
Tracking # and AI #

Water Quality Certification (WQC)

By submitting this form, the property owner grants permission to the representatives of the Maryland Department of the Environment to enter the property during business hours for the purpose of making observations of the proposed project site. If this form is being submitted by the primary contact and not the property owner, the primary contact certifies that he or she is the agent authorized to act on behalf of the property owner and, as the agent, has obtained the property owner's permission for the representatives of the Maryland Department of the Environment to enter the property during business hours for the purpose of making observations of the proposed project site.

Submit by Email

Print Form

Clear Form