SUMMARY BASIS FOR DECISION

Name of Applicant:
Maryland Transportation Authority (MDTA)

Application Number:
19-NT-0150/201960846

Project Manager: Jennifer Bird

Date of Decision: February 21, 2020
Date of Modification: June 5, 2025

This Summary Basis of Decision has been updated in bold with information pertaining specifically to the Modification to the Nontidal Wetlands and Waterways Permit No. 19-NT-0150/201960846. The information not in bold was part of the decision-making process for the original Permit.

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

In the case of the proposed **Permit Modification (Modification)** to Phase II of the I-95 Section 200 Improvements, the question for the Department to address is whether or not the proposed project impacts are acceptable under the regulations as they pertain to such construction activities (see Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal, or Nontidal Wetland in Maryland [Application] dated May 1, 2019 and revised October 11, 2019, previous modifications, **and Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal, or Nontidal Wetland in Maryland Modification request [Modification Application] dated June 26, 2024** in file). The work, as originally permitted, includes extending a two-lane express toll lane (ETL) on northbound I-95 from north of Old Joppa Road to Bynum Run, just south of MD 543; safety and operational improvements along northbound I-95, relocation of the existing Park and Ride at the interchange of I-95 and MD 152, construction of a new Park and Ride on MD 24, construction of two noise walls adjacent to northbound I-95 and two noise walls adjacent to southbound I-95, and providing a new Intelligent Transportation System communication system to improve operations and incident management along both northbound and southbound I-95; wetland mitigation and /or stream restoration at the **HT 3012** Stream Mitigation Site, Carsins Run Stream Mitigation Site, and the Jones Falls Eccleston Mitigation Site; and use of temporary erosion and sediment controls. **This Modification includes final design of a park and ride along northbound I-95 south of MD 152, addition of a deer fence at the Eccleston Mitigation Site, and correction of discrepancies in GIS impact calculations.** The project is located on I-95 from north of Old Joppa Road to Bynum Run, just south of MD 543 in Harford County, Maryland. **Prior to this Modification, the permit authorized permanent impacts to 99,686 square feet of forested nontidal wetland, 7,733 square feet of scrub-shrub nontidal wetland, 31,152 square feet of emergent nontidal wetland, 3,187 square feet of forested/emergent nontidal wetland, 388,271 square feet of 25-foot nontidal wetland buffer, 14,336 linear feet of perennial streams, 9,958 linear feet of intermittent streams, and 110,673 square feet of 100-year nontidal floodplain. The permit authorized temporary impacts to 60,736 square feet of forested nontidal wetland, 6,258 square feet of scrub-shrub nontidal wetland, 88,980 square feet of emergent nontidal wetland, 192,925 square feet of 25-foot nontidal wetland buffer, 1,699 linear feet of perennial streams, 1,010 linear feet of intermittent streams, and**

773,503 square feet of 100-year nontidal floodplain (see the Permit Modification issued June 27, 2024, in file). This Modification authorizes an overall increase of permanent impacts to 97,531 square feet of wetland, 28,331 square feet of 25-foot nontidal wetland buffer, and 389 linear feet of waterway. This Modification authorizes a decrease in 16 square feet of permanent impacts to the 100-year nontidal floodplain, and a decrease in temporary impacts to 5,587 square feet of nontidal wetlands, 655 square feet of 25-foot nontidal wetland buffer, 178 linear feet of waterway, and 6,936 square feet of the 100-year nontidal floodplain. In total, the entire project will permanently impact 177,180 square feet of forested nontidal wetland, 7,733 square feet of scrub-shrub nontidal wetland, 51,189 square feet of emergent nontidal wetland, 3,187 square feet of forested/emergent nontidal wetland, 416,602 square feet of 25-foot nontidal wetland buffer, 14,334 linear feet of perennial streams, 10,349 linear feet of intermittent streams, and 110,657 square feet of 100-year floodplain, and temporarily impact 56,143 square feet of forested nontidal wetland, 6,259 square feet of scrub-shrub nontidal wetland, 82,749 square feet of emergent nontidal wetland, 192,270 square feet of 25-foot nontidal wetland buffer, 1,699 linear feet of perennial streams, 832 linear feet of intermittent streams, and 766,567 square feet of 100-year nontidal floodplain. The project is located on I-95 from north of Old Joppa Road to Bynum Run, just south of MD 543 in Harford County, with proposed mitigation sites in Baltimore and Harford Counties. Due to the schedule of the project, each segment is under a separate design schedule (e.g. Segments KH-3019, KH-3020, KH-3021, KH-3022, KH-3023, KH-3027, KH-3029, KH-3030, KH-3031, KH 3038, KH-3040, and **KH-3043)**; however, the segments were permitted together as part of a single and complete project with independent utility. Therefore, the design is subject to change as the design schedules progress. Any changes relating to impacts shall be reviewed and approved by the Department as required by the Special Conditions of the Permit (see Nontidal Wetlands and Waterways Permit [Permit] dated February 21, 2020 in file). **MDTA submitted the Modification Application on June 26, 2024, and MDE sent comments on the Modification Application on August 16, 2024, determining that the application was incomplete. MDTA responded to comments on September 13, 2024 (see Modification Application dated June 26, 2024 and comment responses dated September 13, 2024, in file).**

PUBLIC NOTICE

Adjoining property owners, local government officials, and other interested persons must be notified of proposed impacts to nontidal wetlands and waterways. In addition, an opportunity to comment and request a public informational hearing must be provided via a local newspaper. **The public notice for the Modification was published in *The Baltimore Sun* on November 21, 2024 and *The Aegis* on November 20, 2024. Project plans were made available online at https://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/index.aspx and https://mdta.maryland.gov/I95ETLNB/EvironmentalStudies (see Public Notice, in file).**

A virtual public informational hearing was held on January 29, 2025. Comments were provided during the public informational hearing and during the public comment period. Comments received during the hearing and during the public comment period included questions from the Gunpowder Riverkeeper, the Harford County Executive, members of Mad About Mud, and other community members about mitigation, endangered species, water quality, sediment in streams, and the necessity of the park and ride (reference recording of public informational hearing dated January 29, 2025, in file). Responses to comments during the public comment period within the Department's purview will be addressed in the appropriate sections that follow.

MDTA has engaged in public outreach efforts throughout the project, starting in September of 2019, which included targeted stakeholder meetings, public update meetings, HOA meetings, and ongoing website outreach.

PROJECT PURPOSE AND NEED

In order for the Department to authorize impacts to nontidal wetlands and their regulated buffers, regulated activities must be determined to be necessary and unavoidable to meet the basic project purpose. It is also important to note that the orderly development and use of land is regulated through planning and zoning controls implemented by the local government. In this particular instance, Baltimore and Harford Counties make the decision about appropriate land use of the property.

The primary need for the I-95 ETL project is to address capacity and safety needs along Section 200 of I-95 in Baltimore and Harford Counties. The purpose of this project is to address these needs and improve access, mobility, and safety for local, regional, and inter-regional traffic, including passenger, freight, and transit vehicles. The MDTA plans to address the project need in Phase II of the I-95 Section 200 Improvements by extending a two-lane ETL on northbound I-95 from north of Old Joppa Road to Bynum Run, just south of MD 136, making safety and operational improvements along northbound I-95, relocating the existing Park and Ride at the interchange of I-95 and MD 152, constructing a new Park and Ride on MD 24, constructing two noise walls adjacent to northbound I-95 and two noise walls adjacent to southbound I-95, and providing a new Intelligent Transportation System communication system to improve operations and incident management along both northbound and southbound I-95. The need for this project was identified in the I-95 Master Plan, which was adopted by MDTA in April of 2003. This master plan identified four independent projects for each section of I-95 that MDTA owns and operates in the state of Maryland, one of which being Section 200, and presented long-range transportation needs that establish clear goals for system maintenance, preservation, and enhancement (see Application dated May 1, 2019, revised October 11, 2019, Section 200 Finding of No Significant Impact [FONSI] dated December 2010).

The Applicant determined that there is insufficient capacity along Section 200 of I-95. The southbound lanes of I-95 between MD 43 and MD 24 operate at a Level of Service D to E during the morning peak hours and the northbound lanes operate at a Level of Service E during PM peak hours. On Friday and weekend peak periods, traffic is operating at full capacity. Congestion is expected to grow from less than 10 to over 30 hours per week by the year 2030, which is a 300 percent increase. By 2030, weekend peak hours for Section 200 are projected to operate at a Level of Service F (see Section 200 FONSI dated December 2010).

The Applicant also considered safety concerns when identifying the need for this project. MDTA identified the crash rate for Section 200 as approximately 12 percent higher than the rate of similar state-maintained highways. Crashes identified as congestion related, including side-swipes and rear-ends, account for 50 percent of the crashes reported between 2002 and 2004. Section 200 has been identified with 34 Candidate Safety Improvement Locations (CSILs) by SHA. MDTA has determined that an increase in the number and severity of congestion related crashes are likely to increase if Section 200 congestion levels are not addressed (see Section 200 FONSI dated December 2010).

As part of the FONSI Reevaluation in 2021, the Applicant conducted additional analysis and studies **that included the Old Mountain Road park and ride** to prioritize the immediate congestion, safety, and operational concerns of the corridor, which resulted in the current project design.

Under this Modification, the Applicant proposes to relocate the existing park and ride at MD 152 to the east, along Old Mountain Road, to accommodate the widened roadway. Although the usage of park and rides has temporarily dropped in the aftermath of the Covid 19 pandemic, the continuing trend of return to work indicates that the need for the park and ride will return to near pre-Covid levels. Before Covid, the use of the park and ride was over 90%. Additionally, a new bus stop is proposed at the park and ride, which will increase the need for the facility.

During the hearing, questions were posed as to why a parking garage could not replace the parking lot and if solar panels are possible. Parking garages can take up more space than a parking lot, due to the need to include traffic circulation through the garage. Additionally, buses need to be able to access the facility. Solar panels were considered for the park and ride but were determined not to be economically viable. In evaluation of solar panels, MDTA utilized MDOT's statewide solar panel contract. Several pre-approved solar panel contractors provided cost estimates for solar panel installation. An acceptable contractor and price could not be obtained. However, the design still incorporates the layout to allow future installation of solar panels.

The Department has determined that the Applicant has satisfied the requirements for the project purpose and need.

ALTERNATIVES ANALYSIS

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

Three alternatives were chosen to be carried forward as a part of the Alternatives Retained for Detailed Study in the Section 200 FONSI. These alternatives were chosen based upon public feedback, engineering traffic analysis, right-of-way impacts, environmental impacts, and viability and interchange options. During the development of these alternatives, MDTA coordinated with BMC and Maryland Transit Administration (MTA) on potential maximum transit ridership. MTA's transit plan for this part of the region includes the Maryland Rail Commuter Investment Plan and express/local bus service enhancements. A separate rail facility was not included within MTA or BMC's regional transit improvements along this I-95 corridor. Therefore, improving intermodal connectivity, including access to the existing transit and rail network, was the primary focus for determining this project's selected alternative (see Section 200 FONSI dated December 2010, email from MDTA dated August 6, 2018, and Comment Response Letter dated August 15, 2018, in file).

Alternative 1, a no-build option, would have allowed maintenance improvements and safety upgrades including replacement of bridge decks, resurfacing of pavement, and replacement and upgrades to traffic barriers, signs and lights, while retaining the existing I-95 highway. This alternate was rejected because it would not fulfill the purpose and need of the project (see Section 200 FONSI dated December 2010, in file).

The second alternative was the General Purpose Lanes (GPL) Alternative, which included constructing additional GPLs along the mainline of I-95 from north of MD 43 to north of MD 22 to accommodate the proposed traffic demand. This alternative would create a total of six GPLs in each direction from the northern limit of the I-95 ETLs Project to the MD 24 interchange. This alternative would improve the configuration at the MD 152, MD 24, MD 543, and MD 22 interchanges. The GPLs Alternative was not chosen as the selected alternative because the number of accessible travel lanes would make it difficult to implement a travel demand management program. Based on the FONSI, this option would increase congestion levels on all lanes and has less incentive for transit or carpooling. Additionally, this alternative created the need for drivers to weave in and out of five to six lanes to exit the highway. This creates more opportunities for crashes to occur and difficulty for disabled vehicles to access the shoulder (see Section 200 FONSI dated December 2010, in file).

The third option, which was chosen as the selected alternative, included adding ETLs to the existing roadway to accommodate the anticipated traffic demand. Under this alternative, I-95 would have four GPLs and two ETLs in each direction, extending from just north of MD 43 to MD 24. This alternative also proposed improvements to the configuration of the MD 152 and MD 24 interchanges. The selected alternative would provide congestion management through a consistently congestion-free travel option, which would continue to be available even as traffic volumes increase over time. The ETLs are anticipated to operate at a superior Level of Service compared to the Level of Service the GPLs in both alternatives by providing predictable and dependable travel times and speeds. Additionally, GPL drivers maximum weave is four lanes and ETL drivers is one lane, which reduces opportunities for crashes and provides easier access to the shoulder for disabled vehicles (see Section 200 FONSI dated December 2010, in file).

Since the selected alternative was determined, no major changes to the design have been made and only minor design changes have occurred; however, funding, as well as a series of analyses and studies conducted in 2017 and 2018 were considered when determining how to prioritize the Section 200 improvements and the project was split into two Phases. The current project is referred to as Phase II of the Section 200 improvements which includes the area from north of Old Joppa Road to Bynum Run, just south of MD 136. The current design for Phase II includes extending a two-lane ETL on northbound I-95 from north of Old Joppa Road to Bynum Run, just south of MD 136; safety and operational improvements along northbound I-95, relocation of the existing Park and Ride at the interchange of I-95 and MD 152, construction of a new Park and Ride on MD 24, construction of two noise walls adjacent to northbound I-95 and two noise walls adjacent to southbound I-95, and providing a new Intelligent Transportation System communication system to improve operations and incident management along both northbound and southbound I-95 (see Section 200 FONSI dated December 2010 and Section 200 Reevaluation dated May 2018, in file). The Department has determined that the Applicant has satisfied the requirements for the project alternatives analysis.

During the 2008 Section 200 Planning Study, eight sites were studied as potential locations for the relocated MD 152 Park and Ride. Three sites were chosen for detailed study. These sites were evaluated based on their proximity to the interchange, existing and forecasted traffic volumes, an origin-destination traffic study, environmental impacts, community impacts, potential safety concerns, and transit compatibility. The original preferred alternative from this study was in the northeast quadrant of the interchange on a portion of the property that is owned by Cornerstone Church. This site ultimately was not chosen as the property owners were not willing to sell for the appraised value. A second site was evaluated on Franklin Road. This site was not chosen as citizens and elected officials raised concerns about traffic, safety, and the presence of high-quality forested wetlands. The Old Mountain Road site, south of MD 152, was ultimately chosen because at a public meeting, it received 65% positive feedback from the community.

AVOIDANCE AND MINIMIZATION

If the alternative site analysis is accepted, the Applicant must demonstrate that adverse impacts to nontidal wetlands, their regulated buffers, and the 100-year frequency floodplain are necessary and unavoidable.

The Applicant has taken measures to avoid and minimize impacts to regulated resources to the greatest extent practicable while still meeting the purpose and need of the project. During the planning and design phases, the following design changes were made in order to avoid and minimize impacts: the proposed Intelligent Transportation System fiber-optic cable installation will occur parallel to I-95 between the guardrail and the light poles, where the least natural resources are present; retaining walls have been incorporated to reduce slope impacts; side slopes are being designed at 2:1 in areas of fill and 2.5:1 in areas of cut; roadway shoulders have been reduced in width from the American Association of State Highway and Transportation Officials preferred width to the minimum width; impacts to high quality wetlands are

being avoided where possible through redesign of stormwater management, environmental site design, and highway facilities, and where practicable, impacted streams will be relocated to newly established toes of slope.

To date, the limits of disturbance within contracts KH-3019 and KH-3021 have been reduced by shifting the alignment into the median where possible, increasing embankment slopes, and identifying the location of a proposed noise wall. Additionally, a number of opportunities have been identified to relocate streams to the new toe of slope, allowing the impacts to be replaced in kind and onsite.

In designing the park and ride at Old Mountain Road several avoidance and minimization measures were implemented including:

- **The proposed park and ride facility has been proposed directly adjacent to the I-95 exit ramp and I-95 roundabout. By positioning the park and ride as far north as possible, the use of available open space has been maximized, minimizing the impacts to sensitive environmental features.**
- **To minimize the stormwater management footprint, the green spaces within the park and ride have been utilized to provide microbioretention, wherever possible. Additionally, the park and ride grading has been kept close to the proposed roundabout and adjacent Old Mountain Road cul-de-sac.**
- **The park and ride relocation proposes six stormwater management facilities to address water quality and quantity requirements. Four of the six facilities have been located outside of existing wetlands and the sizes of these facilities have been maximized within the site parameters. As a result of limited open space, two SWM facilities have been proposed within existing wetlands. The first facility is proposed within the southwestern quadrant to help satisfy SWM quantity and quality requirements. This facility has been located to avoid impacts to WUS E-11 that borders the project to the south. The second facility has been located within the cul-de-sac of the bus turnaround to maximize use of the green space created by the cul-de-sac." The cul-de-sac is designed based upon turning radii of the buses. The center of the cul-de-sac could be designed as a SWM facility, landscape planting area, or hardscaped. To minimize impacts outside of the parking area, the cul-de-sac was designed with SWM facilities. To avoid thermal impacts to the downstream Use III stream, all proposed SWM facilities are filter practices with no permanent wet pools or extended detention storage.**
- **To minimize impacts of the overall fill embankment grading for the park and ride, the proposed grading mimics the existing conditions as much as possible, with the pavement area draining to the western edge to a natural low point. Additionally, 2:1 slopes were utilized wherever possible to limit grading impacts.**
- **An unstable stream (WUS E-11) runs along the southern boundary of the project. While MDTA had considered restoring this stream, the consulting stream restoration engineer advised against it due to the unstable nature of the soils in the area. As a result, the proposed improvements were designed to provide as much buffer from the stream as possible. Impacts to WUS E-11 have been avoided.**
- **A submerged gravel wetland is proposed in the southwest corner of the park and ride and has been designed to avoid impacts to WUS E-11.**

See the Permit Modification request dated June 26, 2024, and the various Avoidance and Minimization of Impacts Memos, in file.

MDTA has determined that the proposed impacts are unavoidable in order to meet the purpose and need of the project. The majority of proposed impacts are associated with proposed widening, stormwater

management practices, park and ride facilities on MD 152 and MD 24, and noise walls required to mitigate noise impacts to adjacent communities. The majority of resources being impacted are lower quality. MDTA anticipates that stormwater management practices will improve the quality of adjacent resources that currently receive large amounts of unattenuated stormwater runoff from I-95. The impacts due to outside widening along I-95 between MD 152 and Bynum Run are unavoidable due to site constraints and drainage conflicts. Oversized headwalls will be used to reduce the length of the culvert extensions in order to minimize stream impacts. MDTA proposes to use the steepest slopes allowable on the backside of required Environmental Site Design facilities to reduce wetland impacts and soil disturbance. Several channels located along the I-95 roadway embankment will be relocated and stabilized onsite instead of being piped (see Application dated May 1, 2019, revised October 11, 2019, previous modification requests, **the Permit Modification Request dated June 26, 2024,** and the various Avoidance and Minimization of Impacts Memos, in file).

The design is subject to change due to the design schedule and phasing of this project and any changes relating to impacts will be reviewed and approved by the Department. MDTA is investigating additional avoidance and minimization measures as the design progresses, including use of additional retaining walls, directional drilling of fiber-optic cable beneath resources, and in-kind replacement of regulated roadside ditches onsite. Special Condition No. 1 has been included in the Permit in order to ensure avoidance and minimization measures continue throughout the design-build and construction process. The Permit also requires strict adherence to the "Best Management Practices for Working in Wetlands and Waterways" in Special Condition No. 3. (see Application dated May 1, 2019, revised October 11, 2019, previous permit modification requests, **the Permit Modification Request dated June 26, 2024,** and the various Avoidance and Minimization of Impacts Memos, in file). The Department has determined that the applicant has and will continue to minimize impacts to nontidal wetlands and waterways to the extent practicable.

WATER QUALITY

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

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

Stormwater Management for the project will be provided in accordance with the Maryland Stormwater Management and Erosion & Sediment Control Guidelines for State and Federal Projects, February 2015 and the 2000 Maryland Stormwater Design Manual, with revisions based on the Stormwater Management

Act of 2007 requiring environmental site design (ESD) to the Maximum Extent Practicable (MEP). At a minimum, water quality management will be required for one inch of rainfall over 100 percent of the proposed new impervious area and 50 percent of the proposed reconstructed impervious area. Runoff will be treated using MDE approved ESD practices including, but not limited to, bio-swales, grass channels, micro-bioretention, rain gardens, and submerged gravel wetlands, which includes treatment of runoff and additional de-icing materials needed for the increased number of travel lanes. In addition, full ESD volume (ESDv) will be provided to the MEP. The ESD standard is met when the post-development hydrology is restored to natural hydrologic conditions assuring channel stability is maintained, pre-development groundwater hydrology is replicated, and nonpoint source pollution is minimized for the 1-year 24-hour frequency storm event. This requires capturing and treating from 1 inch to 2.6 inches of rainfall depending on the site conditions. Where practicable the ESD practices will be sized to manage the required ESDv. As needed, structural practices, including detention ponds and underground detention facilities, will be designed to provide Channel Protection volume (CPv) where the full ESDv cannot be provided in the ESD practices. Cpv is 12- or 24- hour extended detention of the post-developed 1-year, 24-hour storm event (See email from MDTA Project Manager dated July 16, 2018, in file).

During the application review process, the Department verifies that appropriate Best Management Practices are incorporated into the Sediment and Erosion Control Plans and the Stormwater Management Plans as listed above to protect the State's water resources. The Applicant proposes to incorporate appropriate Best Management Practices during construction to meet State water quality standards. The Applicant's plans, **including those for the Old Mountain Road Park and Ride**, will include a detailed sequence of construction with staged erosion and sediment control measures and construction work. Special Conditions Nos. 4-8 and 10 have been included in the Permit to require MDTA to submit all plans for Department review and approval prior to construction in regulated resources (see Permit, dated February 21, 2020).

Streams adjacent to this project are designated as Use I (Haha Branch, James Run, and unnamed tributaries to Gunpowder Falls), Use I-P (Winters Run and its tributaries), and Use III (Little Gunpowder Falls and Bynum Run and their tributaries). Maryland Department of Natural Resources (DNR) Environmental Review Program reviewed this project and stated that Little Gunpowder Falls and Bynum Run support anadromous fish species, including Yellow Perch. No in-stream work is permitted during the period of March 1 to June 15 in Use I and I-P streams, inclusive, during any year; October 1 through April 30 in Use III streams, inclusive, during any year; February 15 through June 15 in Use I streams with the presence of Yellow Perch, inclusive, during any year; and October 1 through June 15 in Use III streams with the presence of Yellow Perch, inclusive any year. The design plans will be reviewed by the Department prior to construction of the culvert extensions and/or replacement, bridge widenings, and stream relocation and/or restoration, and in accordance with COMAR 26.17.04 (Construction on Nontidal Waters and Floodplains). Hydrology and Hydraulic reports for the project shall be submitted to the Department for approval prior to any bridge widening, culvert extension or replacement, and/or stream relocation and restoration in-stream construction as required by Special Condition Nos. 7 and 8 of the Permit (see DNR Environmental Review Program Letters dated October 6, 2017, October 10, 2017, March 2, 2018, March 14, 2018, March 15, 2019, May 14, 2019, and July 2, 2020, Application dated May 1, 2019 and revised October 11, 2019, previous modifications, **and Modification dated June 26, 2024 in file)**.

Tier II Antidegradation Review

Maryland is required by the Clean Water Act to develop policies, guidance, and implementation procedures to protect and maintain existing high-quality waters such as Tier II waters and prevent degradation of existing water quality conditions. Tier II waters have chemical or biological characteristics that are significantly better than the minimum water quality requirements. All Tier II designations in Maryland are based on having healthy biological communities of fish and aquatic insects. Enhanced erosion and sediment control measures are required along the Tier II corridor in order to meet the State's antidegradation policy and to protect and maintain existing high-quality waters.

A portion of the project from MD 152 to MD 24 is located within the Otter Point Creek 1 Tier II Catchment. This catchment has been determined to have No Remaining Assimilative Capacity and any impacts to the catchment require antidegradation review by the Department. MDTA is required to incorporate best management practices for working in Tier II catchments into their erosion and sediment/stormwater designs to the maximum extent possible per the Department's direction. During the public comment period following the December 2021 public hearing a question was raised about whether an anti-degradation analysis and Social and Economic Justification (SEJ) was prepared. Both documents were prepared and the SEJ was made available on the MDE website at the time of the public notice. MDE is requiring that all mitigation be completed no later than two years from the reissuance of the current Wetlands and Waterways modification request received on July 12, 2021 (Phase II of the I-95 ETL Section 200 Improvements). MDTA is required to notify MDE upon the start of grading and the completion of planting of the mitigation project. Reforestation shall incorporate optimum vegetation selection guidance provided in the State Forest Conservation Technical Manual, 3rd edition, 1997 by Maryland Department of Natural Resources. Properties shall be monitored for two years to ensure site success. MDTA shall submit monitoring reports for two years to provide visuals of establishment progress, as well as narrative descriptions. MDTA was required to provide documentation in the form of a planting plan, and declaration of restrictive covenants, conservation easements, or similar documentation to ensure that the mitigation property is protected in perpetuity, and to demonstrate the Tier II mitigation has been fulfilled. **The final SEJ was provided to MDE in November 2023.**

During the public comment period following the January 2025 public informational hearing, a question was raised about whether the anti-degradation analysis and SEJ were updated to include the Old Mountain Road Park and Ride. The park and ride is not located within the Tier 2 watershed and is not included in the SEJ
(see https://mdewin64.mde.state.md.us/WSA/TierIIWQ/index.html). The most recent SEJ was made available on the MDE website following the public hearing.

ENDANGERED SPECIES

Once the application is received, it goes through a screening process. This screening process uses Geographical Information System to determine the proposed site location and whether or not there are designated resources in the area such as rare, threatened or endangered species. If there are resources identified, the Division sends copies of the proposed plan to the appropriate agencies to review and send comments.

During the public comment period following the December 2021 public hearing a question was raised about the potential for rare, threatened, and endangered (RTE) species in the project area. **During the public comment period following the January 2025 public hearing, the question was again asked about RTE species and sensitive species within the project area.** Information regarding RTE species was provided by the applicant with the original permit application and updated as necessary for the modification request. The following information addresses comments received in December 2021. The GIS screening identified

rare, threatened or endangered species within the project area (see Application dated May 1, 2019, revised October 11, 2019 **and the Modification dated June 26, 2024**, in file). Maryland Department of Natural Resources (DNR) Wildlife and Heritage Service (WHS) determined there were no state records for listed plant or animal species within the Phase 2 of I-95 Section 200 project area. The United States Fish and Wildlife Service (USFWS) determined there was one federal record for rare, threatened, or endangered species within the vicinity of the Phase 2 of I-95 Section 200 project. The Northern Long-eared Bat (*Myotis septentrionalis*) is listed in the vicinity of the project area. However, on June 10, 2019, USFWS stated via letter that the projects as proposed are "not likely to adversely affect" the northern long-eared bat because these proposed projects have forest clearing activities that are exempted under the 4(d) Rule for federal actions that may affect the northern long-eared bat. DNR WHS had no comments regarding impacts to rare, threatened, and endangered species from the work as proposed in the Application (**see MDNR WHS Letters dated October 10, 2017, March 15, 2019, May 6, 2019 May 14, 2019, and July 31, 2019, Comment Response Letter emailed June 21, 2019, and USFWS Online Certification Letters dated March 20, 2018, April 23, 2019, June 10, 2019, and December 14, 2020**).

MDTA completed a Northern Long-eared Bat Habitat Assessment and Acoustic Survey for the I-95 Northbound Extension Program in 2023. MDTA submitted the Habitat Assessment and Acoustic Survey and requested to re-initiate consultation with the U.S. Fish and Wildlife Service (USFWS) on December 12, 2023. MDTA also completed Bridge/ Structure Bat Assessment Forms in spring of 2024. On June 12, 2024, the USFWS responded that the direct and indirect effects of the I-95 ETL NB Extension Phase II program may affect but are not likely to adversely affect the northern long-eared bat (NLEB) or tri-colored bat (see NMFS finding dated March 2024, in file).

MDTA coordinated most recently with the National Marine Fisheries Service (NMFS) in March 2024. NMFS found that the adverse effects to essential fish habitat were not substantial.

DNR has the opportunity to review permit applications, including Modifications, when they are submitted to MDE. MDE coordinated with DNR regarding this Modification request and DNR noted that they had no new comments, but the project is still expected to follow all requirements for best management practices (see DNR email, dated September 27, 2024).

During the January 29, 2025 virtual public informational hearing and the subsequent comment period, a comment was received regarding the fact that the public notice did not provide any information about RTEs in the project area. The public notice issued for this Modification complied with COMAR 26.23.02.02 and .08. Specific information about avoidance and minimization, alternatives site analysis, RTEs or historical/archeological resources are not included in public notices.

HISTORIC PRESERVATION

The application was also screened using GIS for historical and archeological resources. The GIS screening identified potential historic properties within the project area (see Application dated May 1, 2019, revised October 11, 2019, in file). On April 12, 2019, MDTA notified the Maryland Historic Trust (MHT) that the project may have an effect on historic properties. Several historic properties and archeological resources were identified from the National Register of Historic Places and the Maryland Inventory of Historic Properties. On May 22, 2019, MHT determined no historic properties will be affected by the project or the final mitigation sites (Jones Falls at Eccleston, Carsins Run, and Lilly Run). (see Application dated August 28, 2019 and MHT coordination dated September 19, 2017 and May 22, 2019, in file, as well as the Permit for I-95 Section 200 Phase I). **MDTA followed up with MHT in 2020 regarding the proposed park and ride. MHT concurred that the project would not have an adverse effect on historic resources (see MHT email dated November 2020, in file).**

MITIGATION

Mitigation is only a consideration in a permit decision after steps have been taken to avoid and minimize impacts to nontidal wetlands and their regulated buffers, and nontidal waterways, including the 100-year floodplain. **Prior to this Modification, the Permittee was required to mitigate for the loss of 99,686 square feet of forested nontidal wetland, 7,733 square feet of scrub-shrub nontidal wetland, 31,152 square feet of emergent nontidal wetland, 3,187 square feet of forested/emergent nontidal wetland, and 9,355 linear feet of streams by creating the equivalent of at least 199,372 square feet of forested nontidal wetland, 15,466 square feet of scrub-shrub nontidal wetland, 31,152 square feet of emergent nontidal wetland, 6,374 square feet of forested/emergent nontidal wetland, and restoring 9,355 linear feet of perennial and intermittent streams (see the permit modification issued June 27, 2024)**. **Under this Modification**, **the Permittee is required to mitigate for the loss of 177,180 square feet of forested nontidal wetland, 7,733 square feet of scrub-shrub nontidal wetland, 51,189 square feet of emergent nontidal wetland, 3,187 square feet of forested/emergent nontidal wetland, and 9,743 linear feet of streams by creating the equivalent of at least 354,360 square feet of forested nontidal wetland, 15,466 square feet of scrub-shrub nontidal wetland, 51,189 square feet of emergent nontidal wetland, 6,374 square feet of forested/emergent nontidal wetland, and restoring 9,743 linear feet of perennial and intermittent streams (see Modification request dated June 26, 2024).**

During the comment period following the 2019 public informational hearing, the December 2021 public informational hearing, **and the January 2025 public information hearing**, questions were raised in regards to how the mitigation sites were chosen and why the majority of the mitigation will occur at the Eccleston Site in Baltimore County. Per the Environmental Protection Agency (EPA)'s 2008 Compensatory Mitigation Rule, in the absence of an approved mitigation bank or potential for on-site mitigation, compensatory mitigation within the same 8-digit HUC watershed for any unavoidable impacts is to be prioritized. Both the impacts and the Eccleston Site are located within the Gunpowder-Patapsco watershed (02060003). The mitigation site search process is described below.

Based on the Compensatory Mitigation Plan provided by MDTA, a mitigation plan was previously created in 2012 for the Section 200 ultimate build-out. A mitigation site search was conducted using GIS, aerial imagery, and field reviews. The MDTA also coordinated with multiple agencies to identify existing opportunities, perform field reconnaissance, and assess the sites; those agencies included USACE, MDE, DNR, the National Marine Fisheries Service, the USFWS, the EPA, the US Department of Agriculture, and the Harford County Department of Planning and Public Works.

Of the sites identified in the 2012 mitigation plan, potential on-site mitigation was prioritized. On-site mitigation included perennial and intermittent concrete-lined systems within Section 200 that were identified for replacement with naturalized channels. Of these previously identified concrete-lined systems, only WUS 25B is located within the current project extents and would be feasible for naturalization. However, this stream was reviewed with MDE and USACE during the Phase II pre-application meeting. At that time, MDE and USACE determined that waters of the US 25B was not a high priority for mitigation, since the stream appears to not provide habitat for fish, is stable in its current condition, and does not have much potential for increased sinuosity.

The previous mitigation plan also included proposed stream mitigation at Carsins Run, waters of the US 14E, Grays Run, and Winters Run, all of which were considered on-site mitigation due to their location within Section 200. Carsins Run is included in this mitigation package. Waters of the US 14E and Grays Run are located outside of the Phase II project area, but within the Section 200 ultimate build-out; therefore, mitigation at these locations will be pursued in future phases to ensure that stream restoration design and roadway design do not conflict. Concrete removal along the stream banks at Winters Run was considered

as part of the current mitigation package but was ultimately determined to be not feasible or practicable, considering the potential for compromising the existing embankments beneath the bridge.

Any mitigation effort requiring acquisition of right-of-way would not be able to meet the accelerated Phase II project schedule. Due to these time constraints, off-site mitigation opportunities identified within the previous mitigation plan are not being pursued.

In 2019, additional on-site mitigation was identified in the form of roadside streams that can be replaced in-kind at the new toe-of-slope where possible. Where stream relocation potential has been identified, these impacts have not been counted towards mitigation requirement totals, since it is anticipated that the impacts will be mitigated on-site, in-kind through the relocation. Several such opportunities have been identified, and additional opportunities for relocation will be sought as design of the various contracts progresses.

Waters of the US F-1 was identified as a potential onsite mitigation opportunity; it is a degraded stream located on the Izaak Walton League property, which will be purchased to allow construction of the MD 24/MD 924 Park and Ride facility. Debris that was deposited, apparently predating the Clean Water Act, can be observed within the stream, including shingles and concrete, and portions of the stream embankment are unstable. However, site constraints, including a sewer line, narrow stream valley, and close proximity to adjacent properties, limit the quality of mitigation that could be accomplished at this location. In addition, it is unknown what hazards the previously deposited materials may pose to workers. Therefore, the MDTA has decided not to pursue mitigation at this location.

Whitemarsh Run is another MDTA-owned site and was discussed as a source of wetland mitigation credit. Excess wetland credits were created there as part of Section 100 mitigation. However, following the completion of Section 100 and the allocation of credits for Phase I of the I-95 ETL Northbound Extension Project, it was determined that insufficient additional wetland credits remain at this site to include it in the mitigation package for Phase II of the I-95 ETL Northbound Extension Project.

The MDTA reached out to Harford County, DNR, and USACE for potential mitigation sites. The sites provided by Harford County were either located on private property or too small in size to be feasible compensatory mitigation projects. DNR identified the Piney Run mitigation site in Carroll County, which was considered as part of the current mitigation package. However, due to extensive encumbrance by an existing sewer line and the presence of historically dumped coal ash, USACE determined that the Piney Run site would not provide viable mitigation.

USACE identified the Lilly Run stream restoration sites during the mitigation site search for Phase I of I-95 ETL Northbound Extension Project. All four phases of Lilly Run are high priority for the City of Havre de Grace, due to ongoing flooding concerns; therefore, all phases of Lilly Run were proposed to be completed to fulfill a portion of the compensatory mitigation required for Phase II of the I-95 Northbound Extension Project.

MDTA ultimately determined that the Lilly Run stream restoration site was infeasible due to an inability to identify some property owners, hazardous soil contamination, Program Open Space impacts, and Norfolk Southern Railroad property requirements. MDTA, therefore, proposed the HT-3012 stream restoration as mitigation for the Phase II ETL project. MDTA restored 2,051 linear feet of an unnamed tributary to the Patapsco River at this site and requested mitigation credits for **1,699** linear feet of the project. HT-3012 is located approximately 100 feet north of I-895 at MD 648. The project included increasing channel sinuosity, adding riffle and other grade control structures, and planting native vegetation.

Finally, the Eccleston mitigation site in Baltimore County was identified as a large, high-quality site that would provide extensive wetland and stream mitigation credit. This project includes large-scale restoration

of an upper-watershed, heavily agriculture-impacted portion of Jones Falls and its floodplain, as well as preservation of adjacent high-quality wetlands and stream. The proposed mitigation will include restoration of multiple first-order tributaries, significant second- and third-order tributaries, and substantial quantities of floodplain wetlands. Restoration of one large, cohesive system is generally considered to result in greater ecological lift than restoration of several smaller, disconnected sites.

The Eccleston Site's location within the upper portion of the watershed is advantageous, as restoration at the site will not only improve water quality onsite but also contribute to improved water quality downstream. Eccleston is also located within a reach of Jones Falls that provides trout spawning waters, although much of the site currently does not provide adequate habitat due to agricultural impacts. In general, the Eccleston Site provides an opportunity to restore functions and values unique to this site via perpetually protecting and restoring spawning waters for Jones Falls, removing the historic impairments resulting from dairy farming (including a piped diversion of a tributary to Jones Falls), and protecting high-quality existing wetlands as well as restoring adjacent connected streams and wetlands previously lost and/or impaired by land use. Design at this site is at an advanced stage and can be constructed quickly. For these reasons, the MDTA decided to pursue the Eccleston Site for mitigation credit.

Wetland mitigation will occur at the Jones Falls Eccleston Mitigation Site and the Carsins Run mitigation site. The Jones Falls Eccleston Mitigation Site is located adjacent to Greenspring Valley Road and Park Heights Avenue in Baltimore County. At the Jones Falls Eccleston Mitigation Site, wetlands will be preserved, enhanced, and created. The Eccleston wetland mitigation site will provide **427,289** square feet of wetland mitigation credit (see updated Phase II Mitigation Plan dated **June 2024**). Carsins Run is located along I-95 at Ripken Stadium. **Wetlands were created during the restoration and the Carsins mitigation site provides 100 square feet of wetland mitigation credit**.

Stream mitigation will also occur at the Jones Falls Eccleston Mitigation Site, the HT-3012 Stream Restoration Site, and the Carsins Run Stream Restoration Site. At the Jones Falls Eccleston Mitigation Site, MDTA will receive **7,856** linear feet of credit for restoration within the Jones Falls and its tributaries. At the **HT-3012 Stream Restoration Site**, **MDTA will receive 1,699 linear feet of credit for restoration along a tributary of the Patapsco River**. The Carsins Run Stream Restoration Site was permitted and approved during Phase I of the I-95 Section 200 project. Credits available at Carsins Run will be applied to Phase II. MDTA will use **188** LF of stream restoration credits for Phase II (**see updated Phase II Mitigation Plan dated June 2024**, in file).

During the Public Hearing, two sites were suggested as potential nearby mitigation: Foster Branch south of MD 152 (Ridgely's Reserve) and Abingdon Woods. MDTA's general policy is to perform mitigation on MDTA right of way or other state-owned property. In the past, MDTA has pursued implementing mitigation projects on private properties, similar to Ridgely's Reserve and Abingdon Woods. However, in order to receive credit, the mitigation site must be protected in perpetuity through a Deed of Restrictive Covenants, Conservation Easement, or equivalent, which is transferred with ownership. Any infringements on terms and conditions reflected in the protective mechanism (e.g., Deed of Restrictive Covenants or equivalent) by the landowner (or others) would be out of MDTA's control, yet MDTA would ultimately be responsible for violations or repairs caused by others.

While the recently proposed warehouse development at Abingdon Woods has been abandoned, nothing precludes the owners seeking future development. (See https://www.bayjournal.com/news/growth_conservation/developer-abandons-plans-to-build-warehouses-in-abingdon-woods/article_2090daa2-4dde-11ef-9d4c-27152ff45d38.html)

With respect to restoration of Foster Branch, the landowner/developer is responsible for any mitigation/remediation measures associated with construction-related impacts such as what is occurring at Foster Branch. There would be significant risk for failure of any restoration efforts performed on Foster Branch prior to full build out of Ridgely's Reserve. Discharges associated with the post-construction conditions of the site would need to be closely monitored for incorporation into the modelling. The timeframe associated with these efforts would be extensive and not feasible to meet the current permitting timeline. Additionally, any data collection at the site to facilitate design would not be representative of baseline conditions at the site, due to the degradation that has occurred.

As planning and design efforts for the next phase of the Program (i.e., Section 300) advance, MDTA will continue looking for opportunities for stream and wetland mitigation within and in close proximity to the project limits.

MDTA is responsible for monitoring and ensuring successful performance of the compensatory mitigation sites. The Permittee must propose specific monitoring and performance standards based on the goals of the mitigation project for the Department's approval. Annual stream monitoring of the Carsins Run Stream Restoration site will be conducted for a period of 10 years, with Monitoring Reports submitted to the Department on years 2, 3, 5, 7, and 10 by December 31 of each year. Annual stream monitoring of the HT-3012 Stream Restoration site will be conducted for a period of 10 years, with Monitoring Reports submitted to the Department on years 1, 3, 5, 7, and 10 by December 31 of each year. Changes in channel cross-section, pattern and profile, bed materials, channel stability, structure stability and condition, and vegetation viability will be evaluated through the monitoring. Monitoring reports will contain the project overview and assessment; monitoring requirements and performance standards; summary of data collected during each monitoring visit including photos, vegetation success, soils and hydrology data; maps and plans showing data points, photo locations, and other pertinent features of the project site; and conclusions discussing the progress of the mitigation site, potential remediation measures, and whether performance standards are being met. Annual monitoring reports for the streams at the Eccleston Mitigation Site shall be submitted for years 2, 3, 5, 7, and 10 following completion of construction and planting of the mitigation site. An additional memorandum is required following Year 1 with information regarding invasive species and cross-sections. Annual monitoring reports for wetlands are to be submitted in years 1, 3, 5, 7, and 10. Reports are required to be submitted to the Department by December 31 of each year. Reports will include performance of wetland vegetation in the created and enhanced wetland areas, development of hydrology and soils in the created wetland area, documentation of invasive species throughout the site, and documentation of problem areas identified with potential corrective remedial measures (**see updated Phase II Mitigation Plan dated June 2024, and Phase II Mitigation Approval Letter dated April 2, 2025, in file**). All submittals will be in accordance with the Phase II Mitigation Approval Letter and the Phase II Mitigation Plan.

MDTA will continue to monitor and manage each mitigation site until each has met performance standards and been deemed to be self-sustaining by the Department. MDTA is the responsible party for long-term management of each site. MDTA will implement adaptive management strategies if necessary by working with the Department to agree upon and implement corrective measures, which could include options such as invasive species management, and installation of monitoring devices to ensure hydrology is adequate. As a state agency, MDTA has been financially assured to construct Phase II of the I-95 Section 200 Improvements project, which includes compensatory mitigation construction and monitoring and long-term maintenance of each mitigation site (**see updated Phase II Mitigation Plan dated June 2024, in file**).