

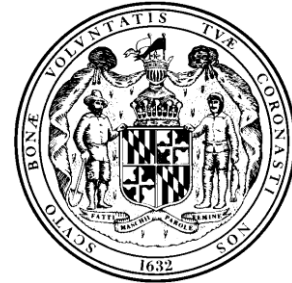
STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION
WETLANDS AND WATERWAYS PROTECTION PROGRAM
NONTIDAL WETLANDS AND WATERWAYS PERMIT

PERMIT NUMBER: 20-NT-0262/202061758

EFFECTIVE DATE: May 11, 2023

EXPIRATION DATE: May 11, 2028

PERMITTEE: Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052
Attn: Inna Tasmaly



IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(a) AND §5-906(b), ANNOTATED CODE OF MARYLAND, COMAR 26.17.04 AND 26.23.01, AND 26.08.02 AND THE ATTACHED CONDITIONS Microsoft Corporation ("PERMITTEE"), IS HEREBY AUTHORIZED BY THE WATER AND SCIENCE ADMINISTRATION ("ADMINISTRATION") TO CONDUCT A REGULATED ACTIVITY IN A NONTIDAL WETLAND, BUFFER, OR EXPANDED BUFFER, AND/OR TO CHANGE THE COURSE, CURRENT OR CROSS-SECTION OF WATERS OF THE STATE, IN ACCORDANCE WITH THE ATTACHED PLANS APPROVED BY THE ADMINISTRATION ON May 9, 2023 ("APPROVED PLAN") AND PREPARED BY Timmons Group AND INCORPORATED HEREIN, AS DESCRIBED BELOW:

To construct a multi-unit data center with all necessary attendant infrastructure (utilities, SWM facilities, connecting roads, buildings, parking, sidewalks, etc.) and anti-terrorism security fencing. The work includes clearing, grading filling. The project will permanently impact 16,192 square feet (0.37 acres) of forested nontidal wetlands, 10,689 square feet (0.25 acres) of emergent nontidal wetlands, 36,460 square feet (0.84 acres) of 25-foot nontidal wetland buffer, 2,459 linear feet (15,265 square feet) of intermittent stream and 162,631 square feet (62,936 cubic yards) of 100-year nontidal floodplain. The project will temporarily impact 8,496 square feet of forested nontidal wetlands. Mitigation is required by this project and is proposed to be satisfied on-site with the relocation of the intermittent stream to the north of the site and creation of compensatory wetland mitigation with wetland creation and plantings associated with the new stream channel design. A Water Quality Certification (21-WQC-0329/202061758) has been issued for this project. The project is located at the site of a reclaimed surface mine site, located at the terminus of Dorsey Run Road, Annapolis Junction, in Anne Arundel County.

A Water Quality Certification (21-WQC-0329/202061758) has been issued for this project.

MD Grid Coordinates N 160972 / E 418040

Heather L. Nelson
Program Manager
Wetlands and Waterways Protection Program

Attachments: Conditions of Permit

cc: MDE Compliance w/file
U.S. Army Corps of Engineers-Nicole Voelker Nasteff
Timmons Group-Matt Neely

Special Condition:

1. The Permittee shall provide to the Administration's Wetlands and Waterways Protection Program the final, approved Erosion and Sediment Control and Stormwater Management Plans. The Administration shall issue a written notice to proceed within two weeks of submission of the final, approved documents. No work shall commence until receipt of written approval from the Administration, and all other required federal, state, county and local approvals have been obtained.

General Conditions:

1. **Validity:** Permit is valid only for use by Permittee. Permit may be transferred only with prior written approval of the Administration. In the event of transfer, transferee agrees to comply with all terms and conditions of Permit.
2. **Initiation of Work, Modifications and Extension of Term:** Permittee shall initiate authorized activities in waterways, including streams and the 100-year floodplain, within two (2) years of the Effective Date of this Permit or the Permit shall expire. [Annotated Code of Maryland, Environment Article 5-510(a)-(b) and Code of Maryland Regulations 26.17.04.12]. Permittee may submit written requests to the Administration for (a) extension of the period for initiation of work, (b) modification of Permit, including the Approved Plan, or, (c) not later than 45 days prior to Expiration Date, an extension of term. Requests for modification shall be in accordance with applicable regulations and shall state reasons for changes, and shall indicate the impacts on nontidal wetlands, streams, and the floodplain, as applicable. The Administration may grant a request at its sole discretion. (Annotated Code of Maryland, Environment Article 5-510(c), and Code of Maryland Regulations 26.17.04.12, and Annotated Code of Maryland, Environment Article 5-907 and Code of Maryland Regulations 26.23.02.07).
3. **Responsibility and Compliance:** Permittee is fully responsible for all work performed and activities authorized by this Permit shall be performed in compliance with this Permit and Approved Plan. Permittee agrees that a copy of the Permit and Approved Plan shall be kept at the construction site and provided to its employees, agents and contractors. A person (including Permittee, its employees, agents or contractors) who violates or fails to comply with the terms and conditions of this Permit, Approved Plan or an administrative order may be subject to penalties in accordance with §5-514 and §5-911, Department of the Environment Article, Annotated Code of Maryland (2007 Replacement Volume).
4. **Failure to Comply:** If Permittee, its employees, agents or contractors fail to comply with this Permit or Approved Plan, the Administration may, in its discretion, issue an administrative order requiring Permittee, its employees, agents and contractors to cease and desist any activities which violate this Permit, or the Administration may take any other enforcement action available to it by law, including filing civil or criminal charges.
5. **Suspension or Revocation:** Permit may be suspended or revoked by the Administration, after notice of opportunity for a hearing, if Permittee: (a) submits false or inaccurate information in Permit application or subsequently required submittals; (b) deviates from the Approved Plan, specifications, terms and conditions; (c) violates, or is about to violate terms and conditions of this Permit; (d) violates, or is about to violate, any regulation promulgated pursuant to Title 5, Department of the Environment Article, Annotated Code of Maryland as amended; (e) fails to allow authorized representatives of the Administration to enter the site of authorized activities at any reasonable time to conduct inspections and evaluations; (f) fails to comply with the requirements of an administrative action or order issued by the Administration; or (g) does not have vested rights under this Permit and new information, changes in site conditions, or amended regulatory requirements necessitate revocation or suspension.
6. **Other Approvals:** Permit does not authorize any injury to private property, any invasion of rights, or any infringement of federal, State or local laws or regulations, nor does it obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.
7. **Site Access:** Permittee shall allow authorized representatives of the Administration access to the site of authorized activities during normal business hours to conduct inspections and evaluations necessary to assure compliance with this Authorization. Permittee shall provide necessary assistance to effectively and safely conduct such inspections and evaluations.
8. **Inspection Notification:** Permittee shall notify the Administration's Compliance Program at least five (5) days before starting authorized activities and five (5) days after completion. For Allegany, Garrett, and Washington Counties, Permittee shall call 301-689-1480. For Carroll, Frederick, Howard, Montgomery and Prince George's Counties, Permittee shall call 301-665-2850. For Baltimore City, Anne Arundel, Baltimore, Calvert, Charles, Harford and St. Mary's Counties, Permittee shall call 410-537-3510. For Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester Counties, Permittee shall call 410-901-4020. If Permit is for a project that is part of a mining site, please contact the Land and Materials Administration's Mining Program at 410-537-3557 at least five (5) days before starting authorized activities and five (5) days after completion.
9. **Sediment Control:** Permittee shall obtain approval from the Anne Arundel County Soil Conservation District for a grading and sediment control plan specifying soil erosion control measures. The approved grading and sediment control plan shall be included in the Approved Plan, and shall be available at the construction site.
10. **Best Management Practices During Construction:** Permittee, its employees, agents and contractors shall conduct authorized activities in a manner consistent with the Best Management Practices specified by the Administration.
11. **Disposal of Excess:** Unless otherwise shown on the Approved Plan, all excess fill, spoil material, debris, and construction material shall be disposed of outside of nontidal wetlands, nontidal wetlands buffers, and the 100-year floodplain, and in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands.

12. **Temporary Staging Areas:** Temporary construction trailers or structures, staging areas and stockpiles shall not be located within nontidal wetlands, nontidal wetlands buffers, or the 100-year floodplain unless specifically included on the Approved Plan.
13. **Temporary Stream Access Crossings:** Temporary stream access crossings shall not be constructed or utilized unless shown on the Approved Plan. If temporary stream access crossings are determined necessary prior to initiation of work or at any time during construction, Permittee, its employees, agents or contractors shall submit a written request to the Administration and secure the necessary permits or approvals for such crossings before installation of the crossings. Temporary stream access crossings shall be removed and the disturbance stabilized prior to completion of authorized activity or within one (1) year of installation.
14. **Discharge:** Runoff or accumulated water containing sediment or other suspended materials shall not be discharged into waters of the State unless treated by an approved sediment control device or structure.
15. **Instream Construction Prohibition:** To protect important aquatic species, motor driven construction equipment shall not be allowed within stream channels unless on authorized ford crossings. Activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08): Dorsey Run is a Use 1 waterway; in-stream work may not be conducted during the period March 1 through June 15, inclusive, during any year.
16. **Instream Blasting:** Permittee shall obtain prior written approval from the Administration before blasting or using explosives in the stream channel.
17. **Minimum Disturbance:** Any disturbance of stream banks, channel bottom, wetlands, and wetlands buffer authorized by Permit or Approved Plan shall be the minimum necessary to conduct permitted activities. All disturbed areas shall be stabilized vegetatively no later than seven (7) days after construction is completed or in accordance with the approved grading or sediment and erosion control plan.
18. **Restoration of Construction Site:** Permittee shall restore the construction site upon completion of authorized activities. Undercutting, meandering or degradation of the stream banks or channel bottom, any deposition of sediment or other materials, and any alteration of wetland vegetation, soils, or hydrology, resulting directly or indirectly from construction or authorized activities, shall be corrected by Permittee as directed by the Administration.
19. **Mitigation:** The Permittee shall mitigate for the loss of 16,192 square feet of forested nontidal wetlands and 10,689 square feet of emergent nontidal wetlands by creating the equivalent of at least 32,384 square feet of forested nontidal wetlands and 10,689 square feet of emergent nontidal wetlands (43,073 square feet total), in accordance with an approved Phase I conceptual mitigation plan, as may be modified by a Phase II Mitigation Plan approved by the Mitigation and Technical Assistance Section ("Section") of the Department, pursuant to COMAR 26.23.04. A Phase II Mitigation Plan shall be submitted to the Section no later than 90 days after the issuance of this Permit, unless an extension has been granted in writing by the Section. The Phase II Mitigation Plan must be approved by the Section, through the Phase II Mitigation Plan Approval Letter and its associated exhibits ("Approval Letter"), prior to commencing the impacts authorized in this Permit. The permittee shall construct the mitigation site per the approved Phase II Mitigation Plan in advance or concurrently with the activities authorized in this Permit. In the event of discrepancy with the mitigation requirements found in this Condition, the standards and requirements set forth in the Approval Letter shall govern. The Permittee shall successfully meet project standards and other requirements, as specified in the Approval Letter and COMAR 26.23.04. The permittee is required to notify the Section upon the start of grading and the completion of planting of the mitigation project. The permittee shall submit monitoring reports for the mitigation project to the Section as specified in the Approval Letter. If the permittee as stated in the Permit, changes, the permittee must notify the Section. If the mitigation obligation is to be transferred to another party, the permittee must notify the Section.

FEDERALLY MANDATED STATE AUTHORIZATIONS

Water Quality Certification is granted for this project provided that all work is performed in accordance with the authorized project description and associated conditions. See individual WQC for 21-WQC-0329/202061758. In addition, as applicable, this Permit constitutes the State's concurrence with the Applicant's certification that the activities authorized herein are consistent with the Maryland Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act of 1972, as amended. Activities in the following counties are not subject to the Maryland Coastal Zone Management requirement: Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington.

U.S. ARMY CORPS OF ENGINEERS AUTHORIZATION

The U.S. Army Corps of Engineers has reviewed this activity and:

☐ Granted authorization under the Maryland State Programmatic General Permit (MDSPGP-6), as a Category A ☐ activity. The terms and conditions of the MDSPGP-6 as outlined in the documents found on the Maryland Department of the Environment's website, https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/MDSPGP6_conditions.aspx, should be followed when performing the authorized work, or

☒ Will issue a Category B authorization or Individual Permit directly to the Permittee.

**BEST MANAGEMENT PRACTICES FOR WORKING IN
NONTIDAL WETLANDS, WETLAND BUFFERS,
WATERWAYS, AND 100-YEAR FLOODPLAINS**

- 1) No excess fill, construction material, or debris shall be stockpiled or stored in nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 2) Place materials in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 3) Do not use the excavated material as backfill if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance.
- 4) Place heavy equipment on mats or suitably operate the equipment to prevent damage to nontidal wetlands, nontidal wetland buffers, waterways, or the 100-year floodplain.
- 5) Repair and maintain any serviceable structure or fill so there is no permanent loss of nontidal wetlands, nontidal wetland buffers, or waterways, or permanent modification of the 100-year floodplain in excess of that lost under the originally authorized structure or fill.
- 6) Rectify any nontidal wetlands, wetland buffers, waterways, or 100-year floodplain temporarily impacted by any construction.
- 7) All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Annual Ryegrass (*Lolium multiflorum*), Millet (*Setaria italica*), Barley (*Hordeum* sp.), Oats (*Uniola* sp.), and/or Rye (*Secale cereale*). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Nontidal Wetlands and Waterways Division. **Kentucky 31 fescue shall not be utilized in wetland or buffer areas.** The area should be seeded and mulched to reduce erosion after construction activities have been completed.
- 8) After installation has been completed, make post-construction grades and elevations the same as the original grades and elevations in temporarily impacted areas.
- 9) To protect aquatic species, in-stream work is prohibited as determined by the classification of the stream:
 - Use I waters: In-stream work shall not be conducted during the period March 1 through June 15, inclusive, during any year.
 - Use III waters: In-stream work shall not be conducted during the period October 1 through April 30, inclusive, during any year.
 - Use IV waters: In-stream work shall not be conducted during the period March 1 through May 31, inclusive, during any year.
- 10) Stormwater runoff from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
- 11) Culverts shall be constructed and any riprap placed so as not to obstruct the movement of aquatic species, unless the purpose of the activity is to impound water.

