

**ENCLOSURE 2: REGIONAL CONDITIONS TO THE 2021 NATIONWIDE PERMITS
FOR THE STATE OF MARYLAND
(EXCLUDING THOSE WATERS OF THE CHESAPEAKE AND DELAWARE
CANAL WITHIN PHILADELPHIA DISTRICT'S AREA OF RESPONSIBILITY)**

I. Regional Conditions Applicable to Specific Nationwide Permits within the State of Maryland:

A. Nationwide Permit 3 *Maintenance*:

Prior to commencing an activity, the permittee must submit a Pre-Construction Notification (PCN) to the District Engineer, for that portion of paragraph (a) of Nationwide Permit (NWP) 3 applicable to the repair, rehabilitation, or replacement in-kind of any previously authorized currently serviceable structure or fill destroyed or damaged by storms, floods, fires, or other discrete events in the following circumstance:

The permittee must submit a PCN to the District Engineer (see General Condition 32 and Regional General Condition 32) for all tide gate replacements where a self-regulating tide gate is not being proposed. Self-regulating tide gates allow tidal flow and fish passage but can be set to close at a specified water level. 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. The District Engineer will coordinate review of the PCN with the National Marine Fisheries Service-Habitat and Ecosystem Services Division.

B. Nationwide Permit 23 *Approved Categorical Exclusions*:

Prior to doing the work, the permittee shall submit a Pre-Construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32).

C. Nationwide Permit 27 *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*:

1. Prior to doing the work, the permittee shall submit a Pre-Construction Notification (PCN) to the District Engineer (see General Condition 32 and Regional General Condition 32).

2. Any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.
3. For activities in all tidal waters, tidal wetlands, and perennial and intermittent nontidal coastal plain streams within the State of Maryland, and all perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the PCN and, where applicable, an essential fish habitat assessment with the National Marine Fisheries Service – Habitat and Ecosystem Services Division.
4. For activities involving impacts greater than 10,000 square feet of aquatic estuarine habitat within mesohaline waters (i.e., salinity 5-18 parts per thousand) of the mid and upper Chesapeake Bay, the PCN shall include information concerning the distribution of horned pondweed (*Zannichellia palustris*) within the project site. Distribution information of horned pondweed shall include a recent ground-truth survey of the area during the period May 1 through June 15. Horned pondweed is less prevalent or does not occur in the tidal waters of the Maryland Atlantic Coastal Bays and upstream of the geographical exclusion lines shown on *Figure 1 – 2021 Nationwide Permits (NWP) Low Salinity Waters of the Chesapeake Bay in Maryland*. Therefore, documentation regarding the presence or proximity of horned pondweed is not required in these areas. See NWP General Condition 32(b)(5) for additional information on delineation of special aquatic sites, including submerged aquatic vegetation. The applicant may request the Corps conduct surveys for horned pondweed; however, this may result in significant delays in review timeframes.
5. 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 NWP will occur. When conducting these evaluations to determine NWP eligibility, there should not be a focus on a specific aquatic resource function, or the ecological service(s) produced from that aquatic resource function. To assist the Corps in making these determinations, prospective permittees considering such activities should provide supporting information in their NWP 27 PCNs to demonstrate net increases in aquatic resource functions and services. Prospective permittees should consider using a Corps-accepted before-and-after functional or conditional assessment protocol to demonstrate project net gains in aquatic resources and services has been achieved.

D. Nationwide Permit 30 Moist Soil Management for Wildlife:

Prior to doing the work, the permittee must submit a Pre-Construction Notification to the District Engineer (see General Condition 32 and Regional General Conditions 32).

E. Nationwide Permit 38 Cleanup of Hazardous and Toxic Waste:

For activities in all tidal waters, tidal wetlands, and perennial and intermittent nontidal coastal plain streams within the State of Maryland, and all perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the Pre-Construction Notification and, where applicable, an essential fish habitat assessment with the National Marine Fisheries Service - Habitat and Ecosystem Services Division.

F. Nationwide Permit 53 Removal of Low-Head Dams:

For activities in all tidal waters, tidal wetlands, and perennial and intermittent nontidal coastal plain streams within the State of Maryland, and all perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the Pre-Construction Notification and, where applicable, an essential fish habitat assessment with the National Marine Fisheries Service - Habitat and Ecosystem Services Division.

G. Nationwide Permit 54 Living Shorelines:

1. 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 three (3) consecutive years. Monitoring reports documenting areal coverage shall be submitted to the Corps annually. If 85% coverage by such species is not attained, the reasons for the failure must be documented in writing and provided to the Corps with proposed corrective measures, including replanting. Final corrective measures must be completed, as approved by the Corps.
2. Living shoreline projects must result in no net loss of wetlands.
3. For all activities, the District Engineer will coordinate review of the Pre-Construction Notification and an essential fish habitat assessment with the National Marine Fisheries Service - Habitat and Ecosystem Services Conservation Division.
4. Ecologically beneficial, existing tidal wetlands should be incorporated into the design of Living Shorelines. Where maintaining existing wetlands on-site would not provide the desired ecological uplift of the project, impacted tidal wetlands should be replaced on-site with the same or similar reference wetland species that occupy the same relative marsh elevations. 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.

5. Grain size analyses for both the dredged and/or 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.

II. Regional Conditions Applicable to All 2021 Nationwide Permits within the State of Maryland Unless Otherwise Stated:

Note: To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any specific NWP regional conditions identified above in Section I, the general conditions found in the issuance and reissuance the NWPs published in the *Federal Register* on December 27, 2021 (86 FR 73522), and any activity-specific verification conditions imposed by the District Engineer.

A. Nationwide Permit Regional General Condition #2 Aquatic Life Movement:

1. **Anadromous Fish Time-of-Year Restriction:** This condition applies to NWPs: 3a, 22, 23, 25, 27, 37, 38, 53, and 54.

To ensure that authorized activities do not impact spawning habitat or a migratory pathway for anadromous fish, work is prohibited during February 15 to June 15 each year to protect sensitive life stages of anadromous fish in all tidal and perennial and intermittent nontidal coastal plain streams within the State of Maryland, and all perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, unless specifically waived by the District Engineer in consultation with National Marine Fisheries Service - Habitat and Ecosystem Services Division.

2. All culverted road crossings of perennial and intermittent streams must meet the below culvert depression criteria, or a Pre-Construction Notification (PCN) is required to be submitted to the District Engineer for review. Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN.
 - a. Culverts measuring greater than 36 inches in diameter must be depressed 12 inches below the stream bottom; or
 - b. Culverts measuring 36 inches or less in diameter must be depressed 6 inches below the stream bottom.
3. If depression of the culvert is not practicable in accordance with this depression criteria, the applicant must submit a Pre-Construction Notification, including a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and

limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. Within anadromous fish use areas, the Corps shall provide a copy of the PCN, including supporting documentation, to the National Marine Fisheries Service – Habitat and Ecosystem Services Division for any culvert which cannot be depressed as outlined in this Regional General Condition 2, *Aquatic Life Movements*. Anadromous fish use areas include tidal and perennial and intermittent nontidal coastal plain streams within the State of Maryland and all perennial and intermittent piedmont streams in Harford and Cecil County, Maryland. The applicant may find it helpful to contact National Marine Fisheries Service for recommendations about the measures to be taken to allow for fish passage.

B. Nationwide Permit Regional General Condition #18 Endangered Species:

1. **For U.S. Fish and Wildlife Service (FWS) ESA species:** All permittees must use the FWS Chesapeake Bay Field Office Project Review website (IPaC) (<https://ecos.fws.gov/ipac/>) to determine if any Federally listed species or designated critical habitat may be present in the proposed project area. A complete application must contain one of the following:
 - a. If the FWS website shows that listed species or designated critical habitat may be present in the proposed project area, then, using the FWS website tool, the permittee must obtain and submit a FWS Official Species List tailored for the proposed project area with the PCN. An Official Species List is considered valid for 90 days.
 - b. If the FWS website shows that no listed species or designated critical habitat are determined to be present in the proposed project area, then, using the FWS website tool, the permittee must generate and submit with the PCN a report that includes an online self-certification letter and a map of action area.
2. **Interactions with NMFS Federally Threatened or Endangered Species:** Any interaction between sturgeon, sea turtles, or any species listed now or in the future under Federal law as a threatened or endangered species (“listed species”) and the vessels associated with the project must be reported to the National Marine Fisheries Service – Protected Resource Division as follows:
 - a. 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;

- b. If the animal requires assistance, the call to the hotline must be made immediately;
 - c. If the animal appears to be injured (i.e., bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify District Engineer of all communications and coordination with the NMFS within two calendar days. Additional information about any Federally threatened or endangered species may be obtained online at: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>. 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.
3. **Vessel Buffer:** When listed species 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. Dredge vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported as described above in condition #2, *Interactions with NMFS Federally Threatened or Endangered Species*.
4. **Conditions for Pile Driving Activities Applicable Within Tidal Waters of the Chesapeake Bay in Maryland:**
- a. A Pre-Construction Notification (PCN) must be submitted to District Engineer if one of the following conditions cannot be met:
 - i. Plastic or concrete piles must be less than 12 inches in diameter when a cushioned impact hammer or vibratory hammer is utilized for installation.
 - ii. Timber piles must be 12 inches or less in diameter when a vibratory hammer is utilized for installation.
 - iii. Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
 - iv. Pile driving activities are located within freshwater tributaries or within tidal or nontidal wetlands.

- v. Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
 - vi. Piles of any size/type with any hammer method must be installed between November 30 and March 15.
 - b. Pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20-minute period to allow fish and other wildlife to leave the area.
- 5. **Sediment Disturbing Activities Time-of-Year Restriction:** Within all tidal waters of the Chesapeake Bay and its tidal tributaries in Maryland with salinity levels <6 parts per thousand, sediment disturbing activities, including pile driving activities, are prohibited during the period April 1 through June 30 for the protection of shortnose sturgeon during early life stages in these waters unless a waiver is received from the District Engineer (see attached Figure 1).
- 6. **Critical Habitat:** Any work proposed in designated or proposed critical habitat requires a Pre-Construction Notification (PCN) to 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 Brenton 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.

C. Nationwide Permit Regional General Condition #22 Designated Critical Resource Waters:

Within the State of Maryland, the designated National Estuarine Research Reserves applicable to NWP Regional Condition #22 are:

- 1. Jug Bay
- 2. Otter Point Creek
- 3. Monie Bay

D. Nationwide Permit Regional General Condition #32 Pre-Construction Notification:

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *Pre-Construction Notification*. These regional general conditions are applicable to all NWPs where a PCN is submitted to the District Engineer. This includes the following: (a) those NWPs that require a PCN, (b) those NWPs requiring notification to the District Engineer pursuant to NWP General Conditions 18 and 22, (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition, and (d) any other pre-constriction notifications to the District Engineer where an applicant has requested verification of an NWP authorization.

1. A PCN shall be submitted the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary as identified by: <http://www.nab.usace.army.mil/Missions/Civil-Works/Nav-Maps/>. In addition, a PCN is required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. As part of any PCN adjacent to a federally authorized channel, the permittee must provide the latitude and longitude of the channelward most point of the proposed structure.
2. **Waters Containing Submerged Aquatic Vegetation (SAV) Beds:** A PCN is required for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. When a PCN is required, the District Engineer will provide a copy of the complete PCN to the National Marine Fisheries Service-Habitat and Ecosystem Services Division (NMFS) for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. The PCN shall include plans depicting the entire project footprint and adjacent waters overlaid on composite mapping of the five (5) most recent years of verified SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys or locations of SAV otherwise identified from actual SAV surveys conducted during the growing season). The NMFS will have a 30-calendar day review and comment period from the date of their receipt of the EFH assessment, as provided by the Magnuson-Stevens Fishery Conservation and Management Act. Additional avoidance and minimization measures, such as relocating a structure, or time-of-year restrictions may be required to reduce impacts to SAV habitat. The Virginia Institute of Marine Science aerial surveys may be obtained at: <https://www.vims.edu/research/units/programs/sav/access/maps/index.php> and <http://mobjack.vims.edu/sav/savwabmap>.

3. All PCNs to the District Engineer shall be completed using the established Corps of Engineers permit application procedures for that locality (see <https://www.nab.usace.army.mil/Missions/Regulatory/Permits-MD/>). All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions, including General Condition 32:
 - a. For projects along and/or within 150 feet of the horizontal limits of a federally authorized channel, the location and depth of any Federal navigation channel shall be shown in relation to the proposed project.
 - b. Copy of response from the FWS concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. Completion of the required screening identified in Regional General Condition 18 and submission of the documents required by the PCN serves as compliance with this condition.
 - c. Copy of response from the State Historic Preservation Officer concerning historic properties that may be affected by the proposed activity.
 - d. Documentation from the appropriate state agency indicating whether the proposed project is located within a State Natural Heritage site (Maryland Department of Natural Resources), Outstanding National Resource Water (Maryland Department of the Environment), or National Estuarine Research Reserve (<https://coast.noaa.gov/nerrs/>). For further information, reference NWP General Condition 22.

E. Nationwide Permit Regional General Conditions A for Certain Activities in Navigable Waters:

1. 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 United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

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

- a. The PCN 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;
 - b. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required;
 - c. Clearances for communication lines, stream gaging 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. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>.
2. 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 (i.e., Section 10 waters), the permittee shall furnish the District Engineer 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 plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.
 3. Aids to Navigation: If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, the permittee must prepare and provide for USCG approval using a Private Aids to Navigation Application (CG-2554). Approval from the Coast Guard for the

Private Aid to Navigation must be received prior to commencement of the authorized work. The form can be found at:
https://www.navcen.uscg.gov/pdf/AIS/CG_2554_Paton.pdf. Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the Corps.

F. Nationwide Permit Regional General Condition B *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.

G. Nationwide Permit Regional General Condition C *Temporary Impacts to Streams*:

Following completion of construction, temporarily affected stream beds shall have bottom contours restored using clean, native materials, where practicable.

H. Section 401 Water Quality Certification Conditions:

The conditions of the Maryland Department of the Environment's Clean Water Act Section 401 water quality certification (WQC) dated October 12, 2021, for activities authorized under NWPs 3(a), 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 53, and 54 (see Appendix A) are incorporated herein as regional conditions. If the permittee cannot comply with all the conditions of this WQC, then the permittee must obtain an individual Section 401 WQC or waiver thereof for any of these NWPs that may result in a discharge into waters of the United States.

I. Coastal Zone Management Act Consistency Determination Conditions:

The Maryland Department of Environment concurred that the Nationwide Permits issued on December 27, 2021 (86 FR 73522) and Maryland Regional Conditions finalized herein are consistent with the Maryland's Coastal Zone Consistency Program's enforceable policies subject to the conditions of the Maryland Department of the Environment's coastal zone management consistency concurrence herein attached in Appendix B for NWPs 3(a), 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 53, and 54. If a permittee cannot comply with all of the conditions of this coastal zone management consistency concurrence, then the applicant must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by any of these Nationwide Permits.

SPECIAL NOTES:

As required, the District Engineer shall coordinate a PCN with the following Federal and State agencies.

Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

State Historic Preservation Officer
Maryland Historical Trust
Division of Historical & Cultural Programs
100 Community Place
Crownsville, Maryland 21032-2023

U.S. Department of the Interior
Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

NOAA/National Marine Fisheries Service
Habitat and Ecosystem Services Division
200 Harry S. Truman Pkwy, Ste 460
Annapolis, Maryland 21401
<https://www.fisheries.noa.gov/contact/greater-atlantic-region-habitat-and-ecosystem-services-division>

NOAA Fisheries Greater Atlantic Regional Fisheries Office
Protected Resources Division
55 Great Republic Drive
Gloucester, MA 01930
Nmfs.gar.esa.section7@noaa.gov

Maryland Department of the Environment
Water Resources Administration
Wetlands and Waterways Program
1800 Washington Boulevard
Baltimore, Maryland 21230-1708

Maryland Department of Natural Resources
Environmental Review, B-3
Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

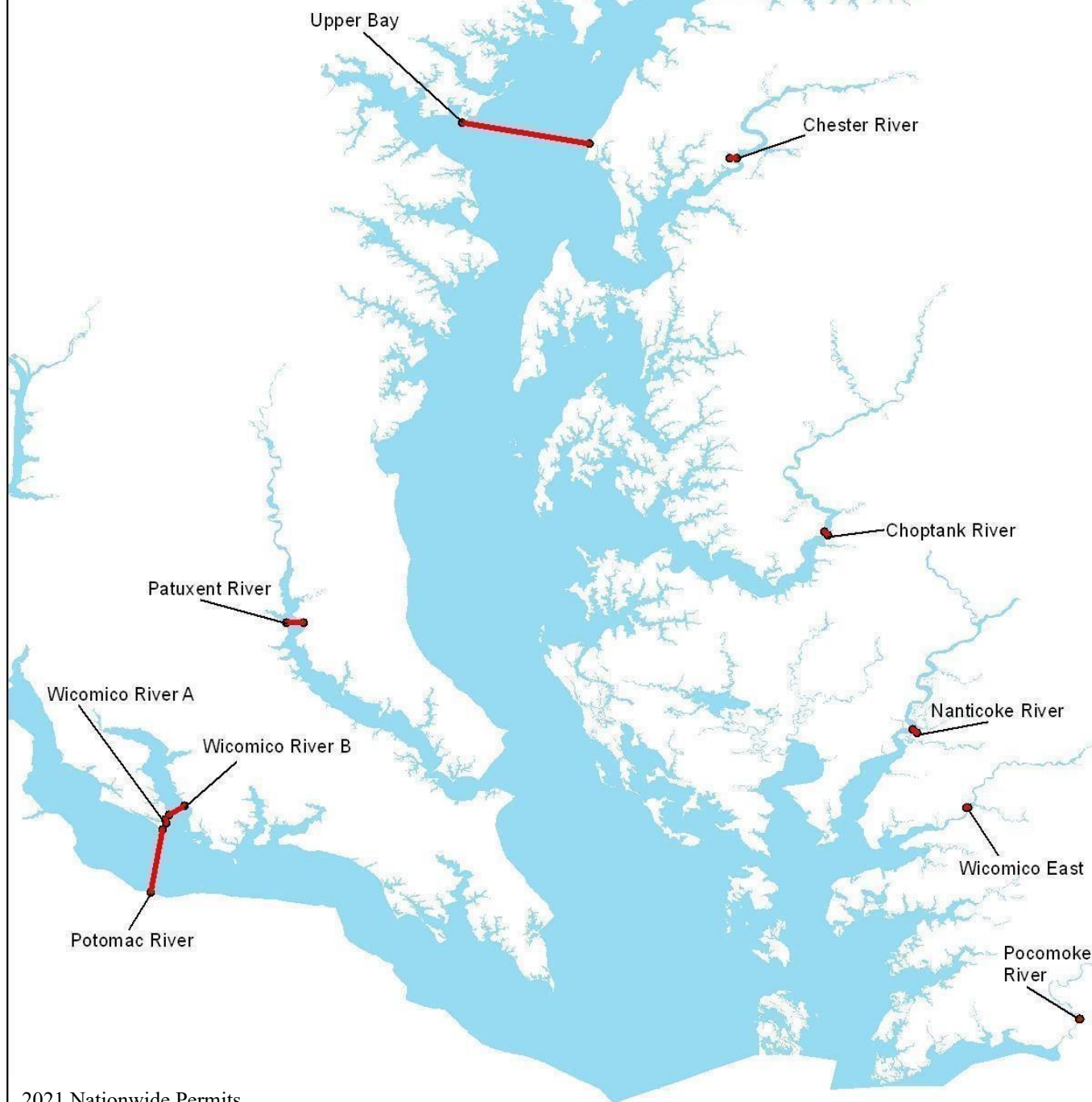
Natural Resources Conservation Service – USDA: local service centers
<https://www.nrcs.usda.gov/wps/portal/nrcs/main/md/contact/local/#Baltimore>

Figure 1 - Low Salinity (<6 ppt) Waters of the Chesapeake Bay in Maryland

2021 Nationwide Permits (NWP) - Maryland Chesapeake Bay

Sediment disturbing activities (pile driving, discharges of dredged or fill material, 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 regional general conditions of the NWPs for more information.

For NWP 27, submerged aquatic vegetation surveys for Horned Pondweed (*Zanichellia palustris*) are not required upstream of the delineated lines on this figure and in the Maryland Atlantic Coastal Bays.



2021 Nationwide Permits
Baltimore District
U.S. Army Corps of Engineers



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION



WATER QUALITY CERTIFICATION

Nationwide Permit Reissuance, SPN-20-62

CERTIFICATION NUMBER: 20-WQC-0050 (R1)

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

U.S. Army Corps of Engineers, Philadelphia District
 The Wanamaker Building, 100 Penn Square East
 Philadelphia, PA 19107-3390

EFFECTIVE DATE: October 12, 2021

PROJECT LOCATION: State of Maryland

DESCRIPTION OF CERTIFIED PROJECT: The Proposed Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in discharges of dredged or fill material into Waters of the United States with no more than minimal individual and cumulative adverse environmental effects. Many of the Proposed NWPs require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 52 existing NWPs with modification and issue five new Nationwide Permits. On October 15, 2020, the U.S. Army Corps of Engineers, Baltimore and Philadelphia Districts, requested a Water Quality Certification (Certification) for the proposed NWPs, with specific regionally applicable conditions and proposed suspensions, and specifically excluded a Certification request for the proposed NWPs numbered 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B because they would authorize activities which, in the opinion of the Corps could not reasonably be expected to result in a discharge into Waters of the United States. The Maryland Department of Environment (Department) disagrees with the Corps assessment of NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B that in all project types the activities will not cause a discharge requiring certification as defined in Section 401 of the Federal Water Pollution Control Act and its Amendments. In the case of NWP 8, it only authorizes activities seaward of the territorial seas. The following proposed NWPs are proposed to be suspended in Maryland: 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 26 (reserved) 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47 (reserved), 49, 50, 51, C, D, E. The following proposed NWPs are proposed to be partially suspended in Maryland: 3, 52. The following proposed NWPs will not be suspended in Maryland: 3 (partial) 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 48, 52 (partial) 53, 54, A, B with regional conditions. The Department issued a Certification (20-WQC-0050) on December 15, 2020 per the Corps October 15, 2020 request.

On January 13, 2021, the Corps reissued 12 existing and/or modified NWPs (NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52) and issued four new NWPs (55 (A), 56(B), 57(C), 58(D)) effective on March 15, 2021. By letter to MDE dated March 8, 2021, the Corps declined to rely on the Certification issued by Maryland on December 15, 2020 for these reissued and new NWPs. As such a project proponent is required to request an individual Certification from Maryland for these NWPs.

On August 19, 2021, the Corps notified Maryland that it was extending the reasonable period of time for Maryland to act on the 41 NWP's not yet reissued by the Corps until October 15, 2021. Specifically, NWP's 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59 (E). The Corps continued to exclude a Certification request for proposed NWP's numbered 1, 2, 8, 9, 10, 11, 24, 28, and 35 because they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into Waters of the United States. The Department disagrees with the Corps' assessment of NWP's 1, 2, 8, 9, 10, 11, 24, 28, and 35 that in all cases these project types or activities will not cause a discharge requiring certification as defined in Section 401 of the Federal Water Pollution Control Act and its Amendments. The Department believes that these project types may involve operations resulting in a discharge or structures which are considered a discharge of fill material when they have the effect of changing the bottom elevation of a Water of the United States (CFR §323.2(e)(1)(ii)). The following proposed NWP's continue to be proposed to be suspended in Maryland: 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 26 (reserved) 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47 (reserved), 49, 50, 51, 56, 57, 58, 59 (E). The following proposed NWP's continue to be proposed to be partially suspended in Maryland: 3, 52. The following proposed NWP's will not be suspended in Maryland: 3 (partial) 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 48, 52 (partial) 53, 54, 55, 56 with regional conditions.

WATER QUALITY CERTIFICATION

This Certification is issued for all NWP's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59 (E), regardless of suspensions proposed.

UNDER AUTHORITY OF SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT AND ITS AMENDMENTS AND IN ACCORDANCE WITH § 9-313 THROUGH § 9-323, INCLUSIVE, OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, THE MARYLAND DEPARTMENT OF THE ENVIRONMENT, WATER AND SCIENCE ADMINISTRATION (DEPARTMENT) HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE REQUEST FOR CERTIFICATION FOR THE PROPOSED NATIONWIDE PERMITS PUBLISHED SEPTEMBER 15, 2020 WITH PROPOSED REGIONAL CONDITIONS SUBMITTED ON OCTOBER 15, 2020 (ATTACHMENTS 1, 2) WILL NOT VIOLATE MARYLAND'S WATER QUALITY STANDARDS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION AND THE NWP PROPOSED REGIONAL PERMIT CONDITIONS AND NWP PROPOSED GENERAL PERMIT CONDITIONS.

This Water Quality Certification (Certification) is issued under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments, Title 9, Subtitle 3 of the Environment Article, and Code of Maryland Regulations (COMAR) 26.08.02.10. The Maryland Department of the Environment (Department) has determined from a review of the request application file that the project activities described in the above will not violate Maryland's water quality standards, provided that the following conditions are satisfied. **This Certification is applicable to the terms of the Proposed Nationwide Permits with General and Regional Conditions and only applies if the Final Nationwide Permits and General and Regional Conditions that are issued are no less restrictive than the Proposed Nationwide Permits and General and Regional Conditions.** This Certification does not relieve any person conducting activities under this Certification and the Proposed Nationwide Permits with General Conditions and Regional Conditions (Certification Holder) from the responsibility to obtain any other approvals, licenses, or permits in accordance with federal, State, or local requirements.

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

SPECIAL CONDITIONS

1) Discharges for any Nationwide Permit, excluding Nationwide Permit 27 and Nationwide Permit 54, resulting in losses exceeding the thresholds below require an individual Water Quality Certification:

- a) 1,000 linear feet or ½ acre, whichever is less, of stream bed or stream bank of perennial or intermittent streams and tidal ditches; or
- b) ½ total acre of tidal and nontidal wetlands.

Statement of Necessity for Condition: The above conditions are required to ensure that waters continue to meet designated uses. Wetlands provide essential habitat, water quality, food, and movement corridors for wildlife. Losses exceeding these limits may result in discharges which interfere with designated uses, including growth and propagation of fish, other aquatic life, and wildlife through loss of stream channel habitat and wetlands. Required mitigation and loss limits will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Code Ann., Env. Article, Title 9, Subtitle 3; Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02B(6)(a); COMAR 26.08.02.02B(7); COMAR 26.08.02.02B(8); COMAR 26.08.02.07 E (1)-(3); COMAR 26.23.02.06

2) The Certification Holder of Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following conditions:

a) An individual Water Quality Certification is required for activities:

i) In nontidal wetlands having significant plant or wildlife value, as defined in COMAR 26.23.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the

link: <https://watershedresourcesregistry.org/states/maryland.html>; or

ii) Resulting in the conversion of greater than ½ acre of forested wetlands to another wetland type, excluding conversions of loblolly pine plantations; and

iii) In tidal wetlands that support threatened or endangered species, or species in need of conservation as listed in COMAR 08.03.08; are contiguous to nontidal wetlands having significant plant or wildlife value as defined in COMAR 26.23.01.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or support communities with bald cypress (*Taxodium distichum*) or Atlantic white cedar (*Chamaecyparis thyoides*) and that contain at least 20 percent of these species in any strata as determined

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by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplements; or

- b) For projects that result in the release of sediments from impounded waters, the Certification Holder shall:

(i) Conduct all sediment testing required by the Department; and

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

(iii) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

Statement of Necessity for Condition: Aquatic life and wildlife often requires specific habitat. Conversion of plant communities and alteration of flow and circulation of waters may result in failure to meet the designated use of that water, including wetlands. The discharge may result in loss of forested wetlands providing shade to maintain temperature criteria for trout.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(3); COMAR 26.08.02.02B(4); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2); COMAR 26.08, COMAR 26.08.02.03B; COMAR 26.08.02.03-3F(3); COMAR 26.08.02.03-E(2); COMAR 26.08.02.03-D(3); COMAR 26.08.02.04-1; COMAR 26.23.02.06

Statement of Necessity for Condition: Removal of material or other remediation may be required prior to removal of a dam to address potential releases of toxic materials in toxic amounts which may adversely impact designated uses and result in violations of downstream water quality standards.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3 A (5), 26.08.02.03-3B (1); 26.08.02.03-3D (5); COMAR 26.08.02.03-3E (2); COMAR 26.08.02.03-3F (5); COMAR 26.08.02.02B(1); COMAR 26.08.02.03-3G (1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); COMAR 26.08.02.02B(4); COMAR 26.08.02.03B(2); COMAR 26.08.02.03-3C (7); COMAR 26.08.02.03B(5); COMAR 26.08.02.03A(1); COMAR 26.23.02.06

- 3) The Certification Holder conducting activities under Nationwide Permit 53, Removal of Lowhead Dams shall:

a) Conduct all sediment testing required by the Department; and

- b) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and
- c) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

Statement of Necessity for Condition: Removal of material or other remediation may be required prior to removal of dam for anticipated resulting discharges in toxic amounts which may have an acute or chronic effect on designated uses and failure to meet water quality standards and meet designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3 A(5), 26.08.02.03-3B(1); 26.08.02.03-3D(5); COMAR 26.08.02.03-3E(2); COMAR 26.08.02.03-3F(5); COMAR 26.08.02.02B(1); COMAR 26.08.02.03-3G(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); COMAR 26.08.02.02B(4); COMAR 26.08.02.03B(2); COMAR 26.08.02.03-3C(7); COMAR 26.08.02.03B(5); COMAR 26.08.02.03A(1); COMAR 26.23.02.06

- 4) The Certification Holder conducting activities under NWP 7 Outfall Structures and Associated Intake Structures shall not:
 - a) Violate water quality standards; and
 - b) Result in erosive flows downstream.

Statement of Necessity for Condition: Construction of stormwater facilities in waters of the United States typically result in alteration of existing waters and are designed to receive pollutants. Discharges from the facility may contribute additional concentrated pollutants, heated waters, and erosion to downstream waters without proper design of the facility. Effects may result in waters failing to meet designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitle 3 and 4; Md. Ann. Code, Md. Ann. Code Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.17; COMAR 26.08.02.03B

GENERAL CONDITIONS

- 1) The Certification Holder shall meet all water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in Waters of the United States to ensure that any discharges will not result in a failure to comply with water quality standards in COMAR 26.08.02. or other water quality requirements of state law or regulation.

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Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under certified Nationwide Permits and that designated uses of waters are maintained.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08.02.10E; COMAR 26.23.02.06

- 2) The Certification Holder conducting activities with temporary impacts to nontidal and tidal wetlands shall ensure that such nontidal and tidal wetlands are restored to pre-construction contours and elevations and previous conditions with at least the same nontidal and tidal wetland acreage and equivalent function as indicated by a return to the same wetland type and in accordance with state issued authorizations.

Statement of Necessity for Condition: The above condition is required to ensure that waters continue to meet designated uses. Wetlands provide essential habitat, water quality, food, and movement corridors for wildlife. Losses exceeding these limits may result in discharges which interfere with designated uses, including growth and propagation of fish, other aquatic life, and wildlife through loss of stream channel habitat and wetlands. Required mitigation and loss limits will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Code Ann., Env. Article, Title 9, Subtitle 3; Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02B(6)(a); COMAR 26.08.02.02B(7); COMAR 26.08.02.02B(8); COMAR 26.08.02.07 E (1)-(3); COMAR 26.23.02.06

Statement of Necessity for Condition: Discharges resulting in losses of forested wetlands adjacent to trout streams may result in increases in water temperature above criteria necessary to support trout. Forested wetland losses adjacent to trout waters shall be minimized for losses for which there is no practicable alternative, compensatory mitigation shall be provided. In addition, temperature increases from loss of shade may result in the lowering of dissolved oxygen in the water below criteria for trout streams.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06; COMAR 26.08, COMAR 26.08.02.03-3D-G

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Statement of Necessity for Condition: Wetland soils are often acidic and their disturbance may result in a failure to meet numeric standards for pH. Limits to losses and mitigation will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3A(4); COMAR 26.08.02.03-3B(1); COMAR 26.08.02.03-3C(4); 26.08.02.03-3C-1(1); COMAR 26.08.02.03-3D(4); COMAR 26.08.02.03-3E(2)(a); COMAR 26.08.02.03-3F(4); COMAR 26.08.02.03-3G(1); COMAR 26.23.02.06

Statement of Necessity for Condition: Activities may result in discharges which interfere with the designated use of public water supply through loss or alteration of natural channel and adjacent wetlands. Required mitigation and loss limits will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.02B(2)(b); 26.08.02.02B(4)(b); 26.08.02.02B(6)(b); 26.08.02.02B(8)(b); COMAR 26.23.02.06

Statement of Necessity for Condition: Temporary disturbances of nontidal wetlands must be conducted in a specific manner to ensure that the area remains a nontidal wetland with at least the same extent and characteristics to maintain designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02 B(6)(a); COMAR 26.08.02.02 B(7); COMAR 26.08.02.02B(8); COMAR 26.23.02.06

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

Statement of Necessity for Condition: The above condition is required to ensure that waters continue to meet designated uses, as losses of wetlands or waterways in a location-- if not addressed through compensatory mitigation in the same watershed, may result in water quality degradation in another water of the United States. Wetlands provide essential habitat, water quality, food, and movement corridors for wildlife. Losses exceeding these limits may result in discharges which interfere with designated uses in other waters, including growth and propagation of fish, other aquatic life, and wildlife through loss of stream channel habitat and wetlands. Required mitigation and loss limits will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Code Ann., Env. Article, Title 9, Subtitle 3; Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02B(6)(a); COMAR 26.08.02.02B(7); COMAR 26.08.02.02B(8); COMAR 26.08.02.07 E (1)-(3); COMAR 26.23.02.06

Statement of Necessity for Condition: Discharges resulting in losses of forested wetlands adjacent to trout streams may result in increases in water temperature above criteria necessary to support trout. Forested wetland losses adjacent to trout waters shall be minimized for losses for which there is no practicable alternative, and compensatory mitigation shall be provided. In addition, temperature increases from loss of shade may result in the lowering of dissolved oxygen in the water below criteria for trout streams.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06; COMAR 26.08, COMAR 26.08.02.03-3D-G

Statement of Necessity for Condition: Wetland soils are often acidic and their disturbance may result in a failure to meet numeric standards for pH. Limits to losses and mitigation will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3A(4); COMAR 26.08.02.03-3B(1); COMAR 26.08.02.03-3C(4); 26.08.02.03-3C-1(1); COMAR 26.08.02.03-3D(4); COMAR 26.08.02.03-3E(2)(a); COMAR 26.08.02.03-3F(4); COMAR 26.08.02.03-3G(1); COMAR 26.23.02.06

Statement of Necessity for Condition: Activities may result in discharges which interfere with the designated use of public water supply through loss or alteration of natural channel and adjacent wetlands. Required mitigation and loss limits will maintain the designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.02B(2)(b); 26.08.02.02B(4)(b); 26.08.02.02B(6)(b); 26.08.02.02B(8)(b); COMAR 26.23.02.06

Statement of Necessity for Condition: Temporary disturbances of nontidal wetlands must be conducted in a specific manner to ensure that the area remains a nontidal wetland with at least the same extent and characteristics to maintain designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02 B(6)(a); COMAR 26.08.02.02 B(7); COMAR 26.08.02.02B(8); COMAR 26.23.02.06

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

Statement of Necessity for Condition: Sidecasting of material within or adjacent to regulated resources or other earth disturbance may result in discharges that result in impacts to water quality, clarity, growth and propagation of fish, other aquatic life, wildlife, potable water; and other designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24

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

Statement of Necessity for Condition: Sidecasting of material or other earth disturbance within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses, including growth and propagation of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06

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

Statement of Necessity for Condition: Restrictions on instream construction are necessary to protect designated uses for propagation and growth of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.03.03B(1)(b); 26.08.02.03.03B(2); COMAR 26.23.02.06

7) The Certification Holder conducting activities in Historic Waterfowl Concentration Areas as identified on the Maryland Department of Natural Resource's MERLIN Online website (<https://gisapps.dnr.state.md.us/MERLIN/index.html>) under the "Living Resources" layer and labeled "Waterfowl Areas", shall apply, unless otherwise determined by the Department in a state authorization, a time of year construction restriction of November 15-March 1, inclusive of any year. The following types of projects are not subject to the November 15-March 1, inclusive of any year, time of year restriction:

- a) Riprap/revetment shoreline protection construction of 375 linear feet or less in length
- b) Bulkhead construction or replacement that is 350 linear feet or less in length
- c) Living shoreline construction that is 375 linear feet or less in length and has a maximum channelward extent of 35 feet or less

Statement of Necessity for Condition: Restrictions on water construction are necessary to protect designated uses for propagation and growth of fish, other aquatic life, and wildlife. A time of year restriction is necessary to allow for wintering waterfowl to move from breeding areas to seasonally use suitable winter habitat. Breeding and wintering habitat are both essential to support waterfowl populations. Breeding habitat alone would not sustain waterfowl during winter. Disturbance during the closure period beyond stated thresholds would interfere directly or indirectly with designated uses for growth and propagation of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.03.03B(1)(b); 26.08.02.03.03B(2); COMAR 26.23.02.06; COMAR 26.08.02.03B(2)(e); 26.08.02.02B(3); COMAR 26.08.02.02B(1)(d)

Statement of Necessity for Condition: Restrictions on instream construction are necessary to protect designated uses for propagation and growth of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.03.03B(1)(b); 26.08.02.03.03B(2); COMAR 26.23.02.06

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

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- a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water; or
- b) Passage of normal or expected high water flows.

Statement of Necessity for Condition: Movement of aquatic life and passage of flows is essential for growth and propagation of aquatic life, fish, and other wildlife to meet these designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

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

Statement of Necessity for Condition: Movement of aquatic life and passage of flows is essential for growth and propagation of aquatic life, fish, and other wildlife to meet these designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

- 10) The Certification Holder shall design and implement stream crossings to meet, at a minimum, unless otherwise determined by the Department in a state authorization, the following performance criteria:

- a) If practicable, a structure (for example, bridge or arched culvert) shall span the bank full wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel;
- b) If a bridge spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less;
- c) Water velocity and depth within the crossing structure shall match those observed at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions;
- d) Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration,

stabilization, etc.). Scour protection may not result in reduced fish passage and shall be avoided where possible;

e) Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature; and

f) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.

Statement of Necessity for Condition: Movement of aquatic life and passage of flows is essential for growth and propagation of aquatic life, fish, and other wildlife to meet these designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04;

11) The Certification Holder shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by the Department, and shall comply with all conditions of such authorizations.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.23.02.06; COMAR 26.17.01; COMAR 26.23; COMAR 26.24

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

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06

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

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met and designated uses are maintained under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06

- 14) All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of this State.

Statement of Necessity for Condition: Fill and construction material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses. The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits, including growth and propagation of fish, other aquatic life, and wildlife, and meets water quality standards for turbidity.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.03.03B(1)(b); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.03-3 A(5); COMAR 26.08.02.03-3B(1); COMAR 26.08.02.03-3D(5); COMAR 26.08.02.03-3E(2); COMAR 26.08.02.03-3F(5); COMAR 26.08.02.03-3G(1); COMAR 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); COMAR 26.08.02.03-3C(5) COMAR 26.08.02.03-3A(5); COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24

Statement of Necessity for Condition: Material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06; COMAR 27.17.04; COMAR 26.23; COMAR 26.24

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

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Statement of Necessity for Condition: The condition is necessary to clarify the scope of this certification to ensure compliance with water quality regulations, without limiting restrictions through other requirements.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08, COMAR 26.08.02.10E; COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24

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

Statement of Necessity for Condition: Conditions of certification involve precise actions to comply with water quality standards. Site inspection may be necessary to ensure that limits, methods, and other requirements are met to ensure that water quality standards are met and designated uses are maintained.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

- 17) This Certification is valid for the NWP's identified herein until such time that the NWP's expire.

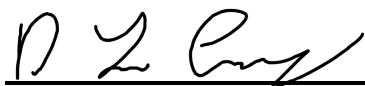
Statement of Necessity for Condition: This condition is necessary to qualify the period of applicability of the terms and conditions of this Certification and Coastal Zone Consistency Determination to be protective of Maryland water quality standards.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; 40 C.F.R. 121, 15 C.F.R. 930, Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

Failure to comply with these conditions may subject the Certification Holder to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

CERTIFICATION APPROVED:

DATE:



October 15, 2021

D. Lee Currey
Director
Water and Science Administration

Attachments (1 & 2)



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION



COASTAL ZONE CONSISTENCY DETERMINATION

Nationwide Permit Reissuance, SPN-20-62

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

U.S. Army Corps of Engineers, Philadelphia District
 The Wanamaker Building
 100 Penn Square East, Philadelphia, PA 19107-3390

DETERMINATION DATE: October 12, 2021

PROJECT LOCATION: State of Maryland

DESCRIPTION OF PROJECT: Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in discharges of dredged or fill material into Waters of the United States with no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWPs require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 52 existing NWPs with modification and issue five new Nationwide Permits. On September 25 and 30, 2020, respectively, the U.S. Army Corps of Engineers, Philadelphia and Baltimore District (District) requested a Coastal Zone Consistency Determination (Determination) under the Coastal Zone Management Act (CZMA) for the proposed NWPs, with specific regionally applicable conditions and proposed suspensions. Further information was submitted by the District's on October 19, 2020. The Department issued a Determination on December 15, 2020.

On January 13, 2021, the Corps reissued 12 existing and/or modified NWPs (NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52) and issued four new NWPs (55 (A), 56(B), 57(C), 58(D)) effective on March 15, 2021. By letter to MDE dated March 8, 2021, the Corps declined to rely on the Determination issued by Maryland on December 15, 2020 for these reissued and new NWPs. As such a project proponent is required to request a Determination from Maryland for these NWPs.

On August 19, 2021, the Corps notified Maryland that it was extending an opportunity to states for supplemental CZMA coordination and opportunity to issue a Determination by Maryland until on or before October 15, 2021 for the 41 NWPs not yet reissued by the Corps. Specifically, NWPs 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59 (E). The following proposed NWPs continue to be proposed to be suspended in Maryland: 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 26 (reserved) 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47 (reserved), 49, 50, 51, 56, 57, 58, 59 (E). The following proposed NWPs continue to be proposed to be partially suspended in Maryland: 3, 52. The following proposed NWPs will not be suspended in Maryland: 3 (partial) 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 48, 52 (partial) 53, 54, 55, 56 with regional conditions.

This Determination is applicable to the terms of the Proposed Nationwide Permits with General and Regional Conditions and only applies if the Final Nationwide Permits and General and Regional Conditions that are issued are no less restrictive than the Proposed Nationwide Permits

COASTAL ZONE CONSISTENCY DETERMINATION
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and General and Regional Conditions. This Determination is issued for all NWP's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and E (59), regardless of suspensions proposed.

COASTAL ZONE CONSISTENCY DETERMINATION

BASED ON THE FOLLOWING CONDITIONS, THE DEPARTMENT HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE PROPOSED NATIONWIDE PERMITS PUBLISHED SEPTEMBER 15, 2020 AND PROPOSED GENERAL AND REGIONAL CONDITIONS (ATTACHMENTS 1, 2) ARE CONSISTENT WITH THE STATE'S FEDERALLY APPROVED COASTAL ZONE MANAGEMENT PROGRAM, AS REQUIRED BY SECTION 307 OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED, AND PROVIDED THAT A PERSON CONDUCTING AN ACTIVITY UNDER A NATIONWIDE PERMIT IN THE MARYLAND COASTAL ZONE SHALL COMPLY WITH ALL APPLICABLE ENFORCEABLE POLICIES (ATTACHMENT 3) UNDER THE APPROVED MARYLAND COASTAL ZONE MANAGEMENT PROGRAM.

CONDITIONS

1) Discharges for any Nationwide Permit, excluding Nationwide Permit 27 and Nationwide Permit 54, resulting in losses exceeding the thresholds below require an individual Determination:

- a) 1,000 linear feet or ½ acre, whichever is less, of stream bed or stream bank of perennial or intermittent streams and tidal ditches; or
- b) ½ total acre of tidal and nontidal wetlands.

Enforceable Policies:

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

2) The person conducting a Nationwide Permit activity (Permittee) shall meet all water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in Waters of the United States to ensure that any discharges will not result in a failure to comply with water quality standards in COMAR 26.08.02. or other water quality requirements of state law or regulation and enforceable policies under the Maryland Coastal Zone Management Program; and local and State Critical Area Program approvals.

COASTAL ZONE CONSISTENCY DETERMINATION

Nationwide Permit Reissuance, SPN-20-62

Enforceable Policies:

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

- 3) The Permittee conducting activities under Nationwide Permit 3 Maintenance shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

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

- 4) The Permittee of NWP 7 Outfall Structures and Associated Intake Structures shall:

- a) Ensure that no discharges from the constructed facility:

(i) Violate water quality standards; or

(ii) Result in erosive flows downstream; and

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

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

- 5) The Permittee conducting activities under Nationwide Permit 13 Bank Stabilization shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

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

- 6) The Permittee conducting activities under Nationwide Permit 14 Linear Transportation Projects shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;

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- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

7) The Permittee of Nationwide Permit 17 Hydropower Projects shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake or Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations; and
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures

8) The Permittee conducting activities under Nationwide Permit 19 Minor Dredging shall comply with the following enforceable policy:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance

9) The Permittee conducting activities under Nationwide Permit 23 Categorical Exclusions shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

10) The Permittee conducting activities under Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following conditions:

- a) An individual Determination is required for activities:
 - i) In nontidal wetlands having significant plant or wildlife value, as defined in COMAR 26.23.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or
 - ii) Resulting in the conversion of greater than ½ acre of forested wetlands to another wetland type, excluding conversions of loblolly pine plantations; and
 - iii) In tidal wetlands that support threatened or endangered species, or species in need of conservation as listed in COMAR 08.03.08; are contiguous to nontidal wetlands having significant plant or wildlife value as defined in COMAR 26.23.01.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or support communities with bald cypress (*Taxodium distichum*) or Atlantic white cedar (*Chamaecyparis thyoides*) and that contain at least 20 percent of these species in any strata as determined by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplements; or

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b) For projects that result in the release of sediments from impounded waters, the Permittee shall:

(i) Conduct all sediment testing required by the Department; and

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

(iii) Submit documentation to the Corps that the Permittee has satisfied the requirements of the Department.

Enforceable Policies:

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

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

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

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

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

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

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

d) The Permittee conducting activities under Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following enforceable policies in addition to #9 a - c above, limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

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

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

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

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

5.2.1 Critical Area Policy 1 – Scope of the Buffer;

5.2.1 Critical Area Policy 2 – Buffer Disturbance; and

5.2.1 Critical Area Policy 17 – Buffer Management Plan

11) The Permittee conducting activities under Nationwide Permit 38 Hazardous and Toxic Waste shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or

5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.

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12) The Permittee conducting activities under Nationwide Permit 40 Agricultural Activities shall comply with the following enforceable policy limited to those areas which have foreseeable coastal effect to waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

5.2.1 Critical Area Policy 25 - Best Management Practices for Agriculture,

13) The Permittee conducting activities under NWP 53 Removal of lowhead dams shall:

a) Conduct all sediment testing required by the Department; and

b) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and

c) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

d) Comply with the following applicable Enforceable Policies;

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control

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

5.1.4. Flood Hazards & Community Resilience Policies 1-3

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alteration;

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

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures

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

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

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

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

5.2.6 Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered
Fish or Wildlife

5.2.6 Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries &
Management Resources.

5.2.6 Living Aquatic Resources Policy 4 – Fish Passage

5.2.6 Living Aquatic Resources Policy 6 – Protection of Forest Buffers Along Trout
Streams

5.2.6 Living Aquatic Resources Policy 7 –Non-Tidal Habitat Protection & Mitigation

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

COASTAL ZONE CONSISTENCY DETERMINATION
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14) The Permittee conducting activities under Nationwide Permit 54 Living Shorelines shall comply with the following enforceable policies:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

15) The Permittee conducting activities under Nationwide Permit 59 (E) shall comply with the following enforceable policy:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance.

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

Enforceable Policy:

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

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

Enforceable Policies:

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

18) The Permittee shall adhere to the construction time of year restrictions, unless waived or amended by the Department, as identified in a state authorization Enforceable Policies:

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- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas
- 5.2.6 Living Resources Policies 1-9

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

- a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water, and
- b) Passage of normal or expected high water flows.

Enforceable Policies:

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

20) The Permittee shall design and implement stream crossings to meet, at a minimum, unless otherwise determined by the Department in a state authorization, the following performance criteria:

- a) If practicable, a structure (for example, bridge or arched culvert) shall span the bank full wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel;
- b) If a bridge spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less;
- c) Water velocity and depth within the crossing structure shall match those observed at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions;
- d) Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal

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flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration, stabilization, etc.). Scour protection may not result in reduced fish passage and shall be avoided where possible;

e) Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature; and

f) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.

Enforceable Policies:

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

5.1.4. Flood Hazards & Community Resilience Policies 1-3

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

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

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

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

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

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

5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall

Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation

5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally

Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Los

5.2.6 Living Resources Policies 1-9

21) The Permittee shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by the Department, and shall comply with all conditions of such authorizations.

Enforceable Policies:

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

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

5.1.4. Flood Hazards & Community Resilience Policies 1-3

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

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

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

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

5.2.6 Living Resources Policies 1-9

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

Enforceable Policies: All Enforceable Policies

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

Enforceable Policies:

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

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

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

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

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

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

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

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

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

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

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

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

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

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

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

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;

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

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

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

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

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

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

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

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

Enforceable Policies: All Enforceable Policies

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

Enforceable Policies: All Enforceable Policies

27) This Determination is valid for the NWP's identified herein until such time that the NWP's expire.

Enforceable Policies: All Enforceable Policies

Failure to comply with these conditions may subject the Permittee to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

DETERMINATION ISSUED:

DATE:



10/12/2021

Heather L. Nelson, Program Manager
Federal Consistency Coordinator
Wetlands and Waterways Program
Water and Science Administration

Attachments (1-3)

Attachment 3

COASTAL ZONE CONSISTENCY DETERMINATION

Nationwide Permit Reissuance Reissuance, SPN-20-6

Maryland Coastal Zone Management Program Enforceable Policies

Approved October 19, 2020, Enforceable July 6, 2020

5.1 CORE POLICIES

5.1.1 Quality of Life

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

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

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

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

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

Quality of Life Policy 6 –Natural Flow of Scenic & Wild Rivers. A dam or other structure that impedes the natural flow of a scenic or wild river may not be constructed, operated, or maintained, and channelization may not be undertaken, until the applicant considers alternatives less harmful to the scenic and wild resource. Construction of an impoundment upon a scenic or wild river is contrary to the public interest, if that project floods an area of unusual beauty, blocks the access to the public of a view previously enjoyed, or alters the stream's wild qualities. MDE/DNR (C7) Md. Code Ann., Nat. Res. § 8-406; COMAR 26.17.04.11.

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

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

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

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

Attachment 3

Maryland Coastal Zone Management Program Enforceable Policies

Approved October 19, 2020, Enforceable July 6, 2020

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

5.1.2. Waste & Debris Management

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

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

5.1.3. Water Resources Protection & Management

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

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

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

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

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

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

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

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Maryland Coastal Zone Management Program Enforceable Policies

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Water Resources Protection & Management Policy 8 – Stormwater Management. Any development or redevelopment of land for residential, commercial, industrial, or institutional purposes shall use small-scale non-structural stormwater management practices and site planning that mimics natural hydrologic conditions, to the maximum extent practicable. Development or redevelopment will be consistent with this policy when channel stability and 100 percent of the average annual predevelopment groundwater recharge are maintained, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary. MDE (C9) Md. Code Ann., Envir. § 4-203; COMAR 26.17.02.01, .06.

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

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

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

Water Resources Protection & Management Policy 12 - No Adverse Impact from Water

Appropriation. Any water appropriation must be reasonable in relation to the anticipated level of use and may not have an unreasonable adverse impact on water resources or other users of the waters of the State. MDE (C9) COMAR 26.17.06.02.

5.1.4. Flood Hazards & Community Resilience

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

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

Flood Hazards & Community Resilience Policy 2a – 1-Foot Freeboard Above 100-year Flood. Proposed floodplain encroachments, except for roadways, culverts, and bridges, shall be designed to provide a minimum of 1 foot of freeboard above the elevation of the 100-year frequency flood event. In addition, the elevation of the lowest floor of all new or substantially improved residential, commercial, or industrial structures shall also be at least 1 foot above the elevation of the 100-year frequency flood event.

Flood Hazards & Community Resilience Policy 2b – Stability of Unlined Earth Channels. Proposed unlined earth channels may not change the tractive force associated with the 2-year and the 10-year frequency flood events, by more than 10 percent, throughout their length unless it can be demonstrated that the stream channel will remain stable.

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

Attachment 3

Maryland Coastal Zone Management Program Enforceable Policies

Approved October 19, 2020, Enforceable July 6, 2020

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

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

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

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

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

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

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Maryland Coastal Zone Management Program Enforceable Policies

Approved October 19, 2020, Enforceable July 6, 2020

5.2 COASTAL RESOURCES

5.2.1 The Chesapeake and Atlantic Coastal Bays Critical Area

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

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

Critical Area Policy 2 – Buffer Disturbance. Disturbance to a buffer in the Critical Area is only authorized for a shore erosion control measure or for new development or redevelopment that is water-dependent; meets a recognized private right or public need; minimizes the adverse effects on water quality and fish, plant, and wildlife habitat; and, insofar as possible, locates nonwater-dependent structures or operations associated with water-dependent projects or activities outside the buffer. Disturbance to a buffer may only be authorized in conjunction with mitigation performed in accordance with an approved buffer management plan. CAC (C9) COMAR 27.01.03.03; COMAR 27.01.09.01, .01-2, .01-3.

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

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

Critical Area Policy 5 -Restrictions on Stream Alterations. Physical alterations to streams in the Critical Area shall not affect the movement of fish. CAC (C9) COMAR 27.01.09.05.

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

Critical Area Policy 7 - Prohibition of Dams and Structures. The construction or placement of dams or other structures in the Critical Area that would interfere with or prevent the movement of spawning fish or larval forms in streams is prohibited. CAC (C9) COMAR 27.01.09.05.

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

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

Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas . Roads, bridges, or utilities may not be constructed in any areas designated to protect habitat, including buffers, in the

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Critical Area, unless there is no feasible alternative and the road, bridge, or utility is located, designed, constructed, and maintained in a manner that maximizes erosion protection; minimizes negative impacts to wildlife, aquatic life, and their habitats; and maintains hydrologic processes and water quality. CAC (C9) COMAR 27.01.02.03C, .04C, .05C.

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

- o To the extent possible, fish, wildlife, and plant habitats should be conserved.
- o Development and redevelopment shall improve the quality of runoff from developed areas that enters the Chesapeake or Atlantic Coastal Bays or their tributary streams.
- o At the time of development or redevelopment, appropriate actions must be taken to reduce stormwater pollution by 10%. Retrofitting measures are encouraged to address existing water quality and water quantity problems from stormwater.
- o Development activities may cross or affect a stream only if there is no feasible alternative, and those activities must be constructed to prevent increases in flood frequency and severity attributable to development, retain tree canopy, maintain stream water temperatures within normal variation, and provide a natural substrate for affected streambeds.
- o Areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, shall be maintained and, if possible, are encouraged to be established.
- o Ports and industries which use water for transportation and derive economic benefits from shore access, shall be located near existing port facilities or in areas identified by local jurisdictions for planned future port facility development and use if this use will provide significant economic benefit to the State or local jurisdiction.
- o Development shall be clustered to reduce lot coverage and maximize areas of natural vegetation.
- o Development shall minimize the destruction of forest and woodland vegetation.

CAC (C9) COMAR 27.01.02.03.

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

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

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CAC (C9) COMAR 27.01.02.04.

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

Critical Area Policy 14 - Water-Dependent Research Facilities. Water-dependent research facilities or activities may be permitted in the buffer, if nonwater-dependent structures or facilities associated with these projects are, to the extent possible, located outside the buffer. CAC (C9) COMAR 27.01.03.09.

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

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

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

Critical Area Policy 18 – Protection of Critical Area from Surface Mining Pollution. All available measures must be taken to protect the Critical Area from all sources of pollution from surface mining operations, including but not limited to sedimentation and siltation, chemical and petrochemical use and spillage, and storage or disposal of wastes, dusts, and spoils. CAC (D5) COMAR 27.01.07.02A.

Critical Area Policy 19 – Reclamation Requirements for Mining. In the Critical Area, mining must be conducted in a way that allows the reclamation of the site as soon as possible and to the extent possible. CAC (D5) COMAR 27.01.07.02B.

Critical Area Policy 20 – Restrictions on Sand & Gravel Operations. Sand and gravel operations shall not occur within 100 feet of the mean high water line of tidal waters or the edge of streams or in areas with scientific value, important natural resources such as threatened and endangered species, rare assemblages of species, or highly erodible soils. Sand and gravel operations also may not occur where the use of renewable resource lands would result in the substantial loss of forest and agricultural productivity for 25 years or more or would result in a degrading of water quality or a loss of vital habitat. CAC (D5) COMAR 27.01.07.03D.

Critical Area Policy 21 - Prohibition of Wash Plants in Buffer. Wash plants including ponds, spoil piles, and equipment may not be located in the 100-foot buffer. CAC (D5) COMAR 27.01.07.03E.

Critical Area Policy 22 – Requirements for Agriculture in the Buffer. Agricultural activities are permitted in the buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters or tributary streams (excluding drainage ditches), or from the edge of tidal wetlands, whichever is further inland, is established in trees with a dense ground cover or a thick sod of grass. CAC (C4) COMAR 27.01.09.01-6.

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Critical Area Policy 23 – Geographical Limits for Feeding or Watering Livestock. The feeding or watering of livestock is not permitted within 50 feet of the mean high water line of tidal waters and tributaries. CAC (C4) COMAR 27.01.09.01-6.

Critical Area Policy 24 – Creating New Agricultural Lands. In the Critical Area, the creation of new agricultural lands shall not be accomplished by diking, draining, or filling of non-tidal wetlands, without appropriate mitigation; by clearing of forests or woodland on soils with a slope greater than 15 percent or on soils with a "K" value greater than 0.35 and slope greater than 5 percent; by clearing that will adversely affect water quality or will destroy plant and wildlife habitat; or by clearing existing natural vegetation within the 100-foot buffer. CAC (C4) COMAR 27.01.06.02C.

Critical Area Policy 25 - Best Management Practices for Agriculture. Agricultural activity permitted within the Critical Area shall use best management practices in accordance with a soil conservation and water quality plan approved or reviewed by the local soil conservation district. CAC (C4) COMAR 27.01.06.02G.

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

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

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

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

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

5.2.2 Tidal Wetlands

Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation. Any action which alters the natural character in, on, or over tidal wetlands; tidal marshes; and tidal waters of Chesapeake Bay and its

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

5.2.3 Non-Tidal Wetlands

Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Lost. Removal, excavation, grading, dredging, dumping, or discharging of, or filling a non-tidal wetland with materials of any kind, including the driving of piles and placing of obstructions; changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; disturbing the water level or water table; or removing or destroying plant life that would alter the character of a non-tidal wetland is prohibited unless: The proposed project has no practicable alternative; adverse impacts are first avoided and then minimized based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions; comprehensive watershed management plans are considered; and the proposed project does not cause or contribute to an individual or cumulative effect that degrades aquatic ecosystem diversity, productivity, and stability, plankton, fish, shellfish, and wildlife, recreational and economic values, and public welfare, surface water quality, or ground water quality. Mitigation measures are required to replace the ecological values associated with non-tidal wetlands that are impaired by activities described above. MDE (C3) COMAR 26.23.01.01; COMAR 26.23.02.04, .06; COMAR 26.23.04.02.

5.2.4 Forests

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

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

Forest Policy 3 –Commercial Timber Cuts of Five Acres or More with Pines Comprising 25% of Live Trees Shall Ensure Pine Resource Sustainability. When any timber is cut for commercial

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purposes from five acres or more of land on which loblolly pine, shortleaf pine, or pond pine, singly or together occur and constitute 25 percent or more of the live trees on each acre, the person conducting the cutting or the landowner shall leave uncut and uninjured at least eight well distributed, cone-bearing, healthy, windfirm, loblolly, shortleaf, or pond pine trees on each acre cut for the purpose of reseeded. DNR (C5) Md. Code Ann., Nat. Res. §§ 5-501, -504.

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

Forest Policy 5 – Protection of Roadside Trees Unless Removal or Trimming Is Justified. Roadside trees should not be cut down, trimmed, mutilated, or injured unless the activity will eliminate a hazard to property, public safety, or health; improve or prevent tree deterioration; or improve the general aesthetic appearance of the right-of-way. DNR (C5) COMAR 08.07.02.05.

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

5.2.5 Historical and Archaeological Sites

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

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

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

5.2.6 Living Aquatic Resources

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

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

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

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

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

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

Living Aquatic Resources Policy 7 – Non-Tidal Habitat Protection & Mitigation. Projects in or adjacent to non-tidal waters shall not adversely affect aquatic or terrestrial habitat unless there is no reasonable alternative and mitigation is provided. MDE (C2) COMAR 26.17.04.11B(5).

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

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

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

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

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

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

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

5.3 COASTAL USES

5.3.1 Mineral Extraction

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

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

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

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

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

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

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

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

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

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

Mineral Extraction Policy 11 – Preparation & Contents of Mining & Reclamation Plans. Coal project proponents must draft a mining and reclamation plan, including a description of the natural resources, geology, and cultural and historical resources within the proposed permit and adjacent areas and the methods for road construction, removing topsoil, controlling drainage, backfilling, and revegetating the affected area, as well as identify baseline hydrologic information and determine the probable hydrologic consequences of the mining and reclamation operations upon surface and ground waters on and off the permit area and plan remedial and reclamation activities. MDE (D5) Md. Code Ann., Envir. §§ 15-505(c), -822; COMAR 26.20.02.05-.09; COMAR 26.20.02.14.

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

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

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

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

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

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

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

Mineral Extraction Policy 19 – Mining-Related Transportation Facilities Shall Prevent Adverse Impacts to the Environment. Transportation facilities constructed for surface coal mining purposes shall be located, designed, constructed or reconstructed, and maintained, and the area restored, in a manner that prevents damage to fish, wildlife, or their habitat and related environmental values; prevents additional contributions of suspended solids to stream flow or runoff outside the permit area; minimizes

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diminution or degradation of water quality and quantity; minimizes erosion, siltation, and attendant air pollution; and prevents damage to public and private property. MDE (D8) COMAR 26.20.19.01D, .08.

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

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

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

Mineral Extraction Policy 23 – Minimize Hydrologic Impacts and Erosion from Mining Areas. The discharge of water from coal mining areas shall be conducted so as to reduce erosion, prevent deepening or enlargement of stream channels, and minimize disturbance of the hydrologic balance. MDE (D5) COMAR 26.20.21.07.

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

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

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

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

Mineral Extraction Policy 28 –Compensation of Water Users Impacted By Mining. The operator of a coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the mining operations. MDE (D5) Md. Code Ann., Envir. §§ 15-524(b), -608(b); COMAR 26.20.13.05D; COMAR 26.20.20.11.

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

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Mineral Extraction Policy 30 – Mining & Reclamation Shall Maintain Pre-Mining Recharge &

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

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

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

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

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

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

5.3.2 Electrical Generation and Transmission

Electrical Generation and Transmission Policy 1 – Power Plants Shall Be Sited, Constructed & Operated to Protect Natural Resources and the Public. Power plants shall be sited, constructed, and operated in a manner which minimizes their impacts on tidal wetlands, aquatic resources, terrestrial resources, significant wildlife habitat, public open space, recreational, and natural areas, air and water quality, and the public health, safety, and welfare. DNR/PSC (D2) Md. Code Ann., Nat. Res. §§ 1-302, 3-303, 3-304, 3-306; Md. Code Ann., Pub. Util. Cos. § 7-208.

Electrical Generation and Transmission Policy 2 – Proposals for New Power Plants, Overhead Transmission Lines, and Qualified Generator Lead Lines Must Include Comprehensive Environmental Assessments, Recommend Mitigation Opportunities & Engage Local Government. Proposals for new power plants, overhead transmission lines, and qualified generator lead lines, must account for their impact on the physical, biological, aesthetic, and cultural features of the site and adjacent areas; identify contributions to air and water pollution; recommend mitigation opportunities; and adequately consider recommendations of local government. Proposals for new power plants also must duly consider the consistency of the application with the comprehensive plan and zoning of each county or municipality in which it is proposed to be located. PSC (D2) Md. Code Ann., Pub. Util. Cos. § 7-207(e); COMAR 20.79.03.02(B); COMAR 20.79.04.04.

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Electrical Generation and Transmission Policy 3 – Proposals for New Transmission Lines Must Estimate Costs to Support Alternative Route Analysis.

Proposals for new transmission lines must estimate the capital and annual operating costs of each alternative route considered and explain why each alternative route was rejected. PSC (D2) COMAR 20.79.04.03.

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

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

5.3.3. Tidal Shore Erosion Control

Tidal Shore Erosion Control Policy 1 – Use Materials to Match Function & Minimize Impacts.

Structural erosion control measures that employ a jetty, groin, breakwater, or other offshore structure shall be designed to use materials that are of adequate size, weight, and strength to function as intended; free of protruding objects, debris, and contaminants; and selected to minimize impacts to water quality and plant, fish, and wildlife habitat. MDE (C1) COMAR 26.24.04.01-4.

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

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

Tidal Shore Erosion Control Policy 4 Nonstructural Shoreline Stabilization That Preserves The Natural Environment Is Required Unless Conditions Warrant Structural Stabilization.

Improvements to protect property bounding on navigable water against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except in areas designated by Department of the Environment as appropriate for structural shoreline stabilization measures, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures. MDE (C1) Md. Code Ann., Envir. § 16-201.

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

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

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

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

Tidal Shore Erosion Control Policy 7 – Conditions Prohibiting Shore Erosion Control Projects.

Tidal shore erosion control projects shall not occur when:

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

MDE (C1) COMAR 26.24.04.01.

5.3.4 Oil and Natural Gas Facilities

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

Oil and Natural Gas Facilities Policy 2 – Detection & Control of Oil Spills. To detect and control oil spills, all private tank vessels transporting oil in the State must either be equipped with a cargo level monitoring system, have double hulls, have a plan for inspecting load lines approved by the Department of the Environment, or be accompanied by an all-weather escort vessel for the purpose of continuously checking for evidence of an oil discharge from the escorted tank vessel. MDE (A2) Md. Code Ann., Envir. § 4-405 (b)(1); COMAR 26.10.01.23B.

Oil and Natural Gas Facilities Policy 3 – Financial Capacity to Cover Potential Oil Spill Cleanup and Recovery. Through bond or other form of security, the operator of a private tank vessel transporting more than 25 barrels of oil as cargo must be able to prove the financial ability to cover the cost of oil spill cleanup and recovery before entering waters of the State. MDE (A2) COMAR 26.10.01.24A.

Oil and Natural Gas Facilities Policy 4 – No Discharge of Oil in Areas That May Enter State Waters. No person may discharge oil in any manner, including through bilge and ballast water, or deposit it in an area where it may enter waters of the State. MDE (A2) Md. Code Ann., Envir. § 4-410(a); COMAR 26.10.01.02B.

Oil and Natural Gas Facilities Policy 5 – Above-Ground Storage Sites Shall Prevent Oil from Polluting State Waters. Above-ground oil storage sites shall prevent movement of oil into the waters of the State. MDE (D1) COMAR 26.10.01.12B(1).

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Oil and Natural Gas Facilities 6 –Oil Shall Not Be Stored within Tidal Waters or Within 100-Year Floodplain Unless Permitted. The construction of above-ground oil storage tanks, dikes, or walls within the tidal wetlands or within the 100-year flood plain is prohibited without first obtaining a State Wetlands Permit or providing an equivalent level of environmental protection. MDE (D1) COMAR 26.10.01.12B(3).

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5.3.5 Dredging and Disposal of Dredged Material

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

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

Dredging and Disposal of Dredged Material Policy 3 – Dredging Shall Allow Flushing & Make Maximum Use of Existing Channels. Dredging of channels, canals, and boat basins shall be designed to provide adequate flushing and elimination of stagnant water pockets, and channel alignment shall make maximum use of natural or existing channels and bottom contours. MDE (B2) COMAR 26.24.03.02.

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

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

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

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

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

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

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

Dredging and Disposal of Dredged Material Policy 11 – Restrictions on Open Water Disposal of Dredge Material in Chesapeake Bay & Its Tributaries. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the water or bottomland of the Chesapeake Bay or of

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the tidewater portion of any of the Chesapeake Bay's tributaries except when the project is undertaken to restore islands or underwater grasses, stabilize eroding shorelines, or create or restore wetlands or fish and shellfish habitats. MDE (A3) Md. Code Ann., Envir. § 5-1101(a), 5-1102.

Dredging and Disposal of Dredged Material Policy 12 – No Open Water Disposal of Dredge

Material in Deep Trough of Chesapeake Bay. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the bottomlands or waters of the Chesapeake Bay known as the deep trough. MDE (A3) Md. Code Ann., Envir. §§ 5-1101(a), -1102.

Dredging and Disposal of Dredged Material Policy 13 – Restrictions on Open Water Disposal of

Dredge Material from Baltimore Harbor. No material dredged from Baltimore Harbor shall be disposed of in an unconfined manner in the open water portion of Chesapeake Bay, or the tidal portions of its tributaries outside of Baltimore Harbor. MDE (A3) Md. Code Ann., Envir. § 5-1102(a).

5.3.6 Navigation

Navigation Policy 1 – Piers Are Preferred to Dredging in Providing Access to Deep Waters.

Navigational access projects shall when possible be designed to use piers to reach deep waters rather than dredging. MDE (B2) COMAR 26.24.03.02.

Navigation Policy 2 – Central Access Channels with Short Spurs Are Preferred to Multiple

Separate Channels. Navigational access channels to serve individual or small groups of riparian landowners shall be designed to prevent unnecessary channels. A central access channel with short spur channels shall be considered over separate access channels for each landowner. MDE (B2) COMAR 26.24.03.02.

Navigation Policy 3 – Channels Shall Minimize Impacts to Tidal Wetlands & Underwater

Topography. Navigational access channels shall be designed to minimize alteration of tidal wetlands and underwater topography. MDE (B2) COMAR 26.24.03.02.

Navigation Policy 4 - New & Expanded Marinas, with a Preference Given to Expansion of Existing Facilities, Shall Be Located in Strongly Flushed Waters More Than 4.5 Feet Deep at Mean Low Tide & Not Adversely Impact Habitat.

New or expanded facilities for the mooring, docking, or storing of more than ten vessels on tidal navigable waters shall be located on waters with strong flushing characteristics and may not be located in areas where the natural depth is 4.5 feet or less at mean low water, and any of the following will be adversely affected: aquatic vegetation, productive macroinvertebrate communities, shellfish beds, fish spawning or nursery areas, rare, threatened, or endangered species, species in need of conservation, or historic waterfowl staging areas. Expansion of existing facilities is favored over new development. MDE (A1) COMAR 26.24.04.03.

Navigation Policy 5 – Restrictions on Placement of Mooring Buoys.

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

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

5.3.7 Transportation

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

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

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

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

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

5.3.8 Agriculture

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

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

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

Agriculture Policy 4 – Nutrient Management Shall Minimize Water Quality Impacts. An agricultural operation with \$2500 a year in gross income or more than 8000 pounds of livestock that uses chemical fertilizers, sludge, or animal manure shall use these nutrients in a way that minimizes impacts on water quality. MDA (C4) Md. Code Ann., Agric. § 8-803.1.

Agriculture Policy 5 – Agricultural Drainage Projects Shall Provide Substantial Agricultural Benefits, Minimize Environmental Impacts, & Be Consistent with Soil Conservation Plans.

Agricultural drainage projects shall provide substantial agricultural benefits, prevent direct over bank flow into the ditch, be truncated as far upstream as possible, minimize adverse environmental impacts, and implement and maintain approved soil conservation district conservation plans. MDE (C3) COMAR 26.17.04.11.

5.3.9 Development

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

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

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

Development Policy 4 – First Avoid then Minimize Wetland Impacts, Minimize Water Quality, Habitat & Forest Damage & Preserve Cultural Resources. Development must avoid and then minimize the alteration or impairment of tidal and non-tidal wetlands; minimize damage to water quality and natural habitats; minimize the cutting or clearing of trees and other woody plants; and preserve sites and structures of historical, archeological, and architectural significance and their appurtenances and environmental settings. MDE/DNR/CAC (D6) Md. Code Ann., Envir. §§ 4-402, 5-907(a), 16-102(b); Md. Code Ann., Nat. Res. §§ 5-1606(c), 8-1801(a); Md. Code Ann., Land Use § 8-102; COMAR 26.24.01.01(A).

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

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

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

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

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

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

Development Policy 11 - Protect Existing Community Character & Concentrate Growth.

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

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

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

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

5.3.10 Sewage Treatment

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

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

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

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

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

Sewage Treatment Policy 6 – A Discharge Permit is Required Prior to Constructing, Altering or Operating a Sewage Treatment Facility. Before constructing, installing, modifying, extending,

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altering, or operating a sewage treatment facility that could cause or increase the discharge of pollutants into the waters of the State, the proponent must hold a discharge permit issued by the Department of the Environment or provide an equivalent level of water quality protection. MDE (D7) Md. Code Ann., Envir. § 9-323(a).

Sewage Treatment Policy 7 – Water Quality Protection from On-Site Sewage Disposal Systems.

Before attempting to construct or alter an on-site sewage disposal system or cause it to receive any increase in flow or change in the character of wastewater, the proponent must provide an equivalent level of water quality protection to that of a permit from the Department of the Environment. MDE (D7) COMAR 26.04.02.03.

Sewage Treatment Policy 8 – New Sewage Treatment Plants Shall Meet State Effluent Water Quality Standards.

New sewage treatment plants shall be constructed so as to meet the State effluent water quality standards, including those for bacteriological values, dissolved oxygen, pH, and temperature conditions, which may require advanced waste treatment. MDE (D7) Md. Code Ann., Envir. § 4-303.

Sewage Treatment Policy 9 – At Least Secondary Treatment Is Required for Sewage Treatment Discharge Into Any State Waters.

Secondary treatment is required as a minimum for sewage treatment works discharging into any waters of the State. MDE (D7) COMAR 26.08.04.04C.

Sewage Treatment Policy 10 – If Secondary Treatment Cannot Achieve Water Quality or Nutrient Control Requirements, Sewage Treatment Facilities Are Subject to Additional Restrictions.

If compliance with the established water quality standards or nutrient control requirements cannot be achieved through secondary treatment for all sewage discharges within a specific river segment or water region, the sewage treatment facilities are subject to additional restrictions. MDE (D7) COMAR 26.08.01.02C.

Sewage Treatment Policy 11 – Advanced Waste Treatment is Required for Facilities Exceeding 1 Million Gallons Per Day Discharging into Water Quality Limited Waters & May Be Needed on Smaller Systems.

Advanced waste treatment is required for all sewage treatment works with a design capacity exceeding 1 million gallons per day and discharging into water quality limited waters. Advanced waste treatment may also be required for smaller sewage treatment works where the Department of the Environment determines that this level of treatment is necessary. MDE (D7) COMAR 26.08.04.04C.

Sewage Treatment Policy 12 – Phosphorus Discharge Limits for Sewage Treatment Plants.

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

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

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

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

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

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

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

Sewage Treatment Policy 19 – A Sewage Sludge User May Not Interfere with State or Local Inspections at a Utilization Site. A sewage sludge user may not interfere with any inspection of a sewage sludge utilization site, including prohibiting access to any representative of the Department of the Environment, to a local health official, or to the local health official, or to the local health official's designee who requests access to perform any activities to determine compliance with the applicable permit, authorization, approvals, and regulations. MDE (D7) Md. Code Ann., Envir. § 9-243; COMAR 26.04.06.04.

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

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

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

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

MDE (D7) COMAR 26.04.02.03; COMAR 26.04.02.04.