DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
STATE OF MARYLAND

MDSPGP-5
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The Baltimore District of the U.S. Army Corps of Engineers (Corps) hereby issues the Maryland State Programmatic General Permit-5 (MDSPGP-5) for activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These excepted areas fall within the Corps Philadelphia District's regulatory geographic boundaries. Activities with minimal adverse environmental effects, as specified by the terms and conditions of this MDSPGP-5, are either non-reporting to the Corps (provided required State and local permits and required State certifications are received), or will be reviewed by the Corps, the resource agencies, and in certain cases the public, who may determine that such activities are eligible for authorization under the MDSPGP-5. This MDSPGP-5 does not affect the alternate Corps permit review processes or activities exempt from the Corps permit processes.

This MDSPGP-5 authorizes work in waters of the United States within the state of Maryland for activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions, and limitations contained herein. This MDSPGP-5 builds upon the existing Wetlands and Waterways Program of the Maryland Department of the Environment (MDE) and is designed to improve the regulatory process for applicants, reduce unnecessary duplicative project evaluations, and promote more effective and efficient use of Corps resources while providing equivalent environmental protection for aquatic resources. This programmatic general permit has been developed in a cooperative effort with the MDE, which has regulatory authority over waters of the State of Maryland.

I. **Authorities:**

A. **Federal Authorities:**

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

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

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

4. Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged or fill material or the placement of structures into waters of the United States including wetlands and navigable waters. These discharges and structures must comply with all terms and conditions identified in the MDSPGP-5. Discharges or structures that do not meet the terms and conditions of Category A will be reviewed by the Corps to determine their eligibility for authorization under the MDSPGP-5.

5. Section 404(c) of the CWA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any

defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

6. Section 404(q) of the CWA states that agreements are to be entered in order to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits. The Corps has entered into Memoranda of Agreement (MOA) with U. S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and EPA to outline the means for achieving these goals. The procedures established by these MOAs are maintained, where applicable, in this permit.

7. Section 404(t) of the CWA states that nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

B. **State Authorities:**

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

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

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

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

5. All other applicable regulations.

II. Scope of Activities:

A. **Applicability:** This programmatic general permit applies to the discharge of dredged or fill material and/or the placement of structures, that are components of a single and complete project, including all attendant features both temporary and permanent, which individually and cumulatively result in direct impacts (those that are caused by the activity and occur at the same time and place) or indirect impacts (those that are caused by the activity and are related in time or farther removed in distance, but are still reasonably foreseeable) not to exceed 1.0 acre (43,560 square feet) of waters of the United States, including jurisdictional wetlands and/or 2,000 linear feet of streams, for specific categories of activities as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. Authorization under the MDSPGP-5 requires compliance with all of the terms and conditions of the MDSPGP-5 and that the activities authorized have only minimal individual and cumulative adverse effects on the environment. All individual impacts for an overall project will be added cumulatively to determine eligibility for authorization under the MDSPGP-5.

1. Category A: Discharges of dredged or fill material or the placement of structures, as described in Category A of the Description of MDSPGP-5 Authorized Activities, that comply with the terms and conditions contained in the MDSPGP-5 and have only minimal individual and cumulative adverse effects on the environment are authorized by the Corps.

2. Category B: Discharges of dredged or fill material or the placement of structures, as described in Category B of the Description of MDSPGP-5 Authorized Activities, will be reviewed and verified by the Corps and appropriate resource agencies to determine whether such activities may be authorized under this MDSPGP-5.

The term “impacts to waters of the United States” as used herein for the purpose of determining MDSPGP-5 eligibility means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes any filled area, both temporary and permanent, plus the area of waters of the United States, including jurisdictional wetlands, which are adversely affected by the project through mechanical land clearing and/or permanent flooding, excavation, or drainage because of the regulated activity. Acreage of impacts to stream channels shall be measured along the centerline of the stream and bank to bank at the ordinary high water line or the mean high water shoreline.

B. **Activities Authorized by the MDSPGP-5:** This MDSPGP-5 authorizes all activities listed in Category A of the MDSPGP-5 and those activities in Category B that comply with all terms and conditions of the MDSPGP-5, including the activity-specific requirements, and have no more than minimal individual and/or cumulative adverse environmental effects. As a condition of its use, the MDSPGP-5 requires verification in certain instances specified in the MDSPGP-5. Receipt of such verification does not eliminate the requirement that, to be authorized under the MDSPGP-5, the activity must comply with all its terms and conditions. Several of the Category A activities require an application submittal to MDE for verification of Corps authorization prior to commencement of the proposed work. All Category B activities must be reviewed by the Corps and coordinated with the resource agencies and the public, as appropriate, to ensure that the project will result in no more than minimal adverse environmental effects, individually and/or cumulatively, before making a decision to verify eligibility of projects for authorization under the MDSPGP-5. Some examples of Category B projects that would not require full resource agency/public coordination would include activities that are reporting to the Corps because of issues related to essential fish habitat (EFH), historic properties, or that are exempt or grandfathered from State of Maryland review or are located near Federal projects/channels, but that would otherwise meet the terms and activity-specific requirements of a Category A activity. In such cases, the Corps will consult directly with the appropriate agency to resolve the outstanding resource issue (e.g., the Corps will consult with Maryland Historical Trust (MHT) regarding cultural resource issues). The MDSPGP-5 provides authorization in accordance with Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act.

C. **Activities Not Authorized by the MDSPGP-5:**

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

2. Activities that do not comply with the terms and conditions of the MDSPGP-5, which includes the terms, conditions, and impact thresholds and requirements specific to each listed category of activities.

3. Single and complete projects, including all attendant features both temporary and permanent, which will result in more than one acre (43,560 square feet) of impact, both direct and indirect, to waters of the United States, including jurisdictional wetlands and/or 2,000 linear feet of streams, rivers, and other open waters. The acreage of impact to all waters of the United States includes any filled area, temporary or permanent, plus those waters of the United States that are adversely affected by the project through permanent flooding, excavation, drainage, or mechanized land clearing because of the regulated activity.

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

5. Activities that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have been denied Water Quality Certification (WQC) or a Coastal Zone Consistency (CZC) determination. Activities that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP-5 without prior review and approval under the appropriate category of the MDSPGP-5, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP-5 without prior approval by the Corps.

6. Activities that were initiated prior to the issuance of the MDSPGP-5 without proper Corps authorization or without notification and approval by the State until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.

7. Activities that are proposed for MDSPGP-5 authorization for the purpose of resolving violations of the CWA or the Rivers and Harbors Act of 1899 may not be authorized by the MDSPGP-5 without prior approval by the Corps. Proposed activities that are not themselves violations, but are part of the same project or that occur on the same property as the violation, may not be authorized by the MDSPGP-5 without prior verification by the Corps.

A. **General Criteria for Category A and Category B Activities:** In order for activities to qualify for this MDSPGP-5, they must meet the MDSPGP-5's terms, impact thresholds and activity-specific requirements (pages 12-62), and general conditions (pages 71-83), for Category A or Category B.

Under the MDSPGP-5, projects may qualify for the following:

- Category A: Corps review not required. Submittal of a Federal/State Joint Permit Application to MDE may or may not be required for verification of MDSPGP-5. See specific activity for further instructions.
- Category B: Corps review required. Submittal of a Federal/State Joint Permit Application is required, and written approval from the Corps must be received.

If your project is ineligible for Category A, it may qualify for Category B or alternate Corps permit review procedures. The thresholds for Categories A and B are defined in each category. This MDSPGP-5 does not affect the alternate Corps permit review procedures or activities exempt from Corps regulation.

E. **Category B Activities Requiring Application Submittal:** The following situations list the criteria which require notification to the Corps via the Federal/State Joint Permit Application and review as a Category B activity. Submission of a Federal/State Joint Permit Application through MDE's Regulatory Services Coordination Office is required in the following situations, even though the proposed impacts to waters of the United States may be less than the activity-specific impact limits of the associated Category B activities. The applicant shall not begin the project until notified by the Corps in writing that the project may proceed under the MDSPGP-5 with any special conditions imposed by the Corps:

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

2. Proposed construction that will occur along and/or within 150 feet of the horizontal limits of a Federal navigation project (See Section IV.B.2.a.(1) and Section VII.B.7.a.). A Federal Navigation Channel Map is provided in the appendix of this permit. Please see the Baltimore District's Regulatory webpage to view the Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels: http://www.nab.usace.army.mil/Missions/CivilWorks/NavMaps.aspx

3. Construction of a project that is proposed in or adjacent to proposed or existing Federally authorized civil works project, as described in Category B, Section IV.B.2.a.(2);

4. A project that is grandfathered by the State from MDE's permit requirements, as described in Category B, Section IV.B.2.b.;

5. A project that requires Corps authorization under Section 10 and/or 404 and that is exempt from MDE's permit requirements or not regulated by MDE's Wetlands and Waterways Program, as described in Category B, Section IV.B.2.c., except for those activities that have been identified as not requiring an application for Corps authorization ;

6. A project that has been previously denied a Corps or MDE authorization as described in Category B, Section IV.B.2.d.(1);

7. A project that is a violation of Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899 as described in Category B, Section IV.B.2.d.(2).

8. A project that may have effects to EFH and requires consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act as described in Category B, Section IV.B.2.e.

9. A project that has the potential to cause effects to any historic properties listed, determined to be eligible for listing, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the MHT and the National Register of Historic Places (Section IV.B.2.f.).

10. A project that may have effects on any Federally listed threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the designated critical habitat of such species. The application must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work (Section IV.B.2.f.).

F. **Alternate Corps Permit Review:** Activities that require DA authorization, but that do not comply with the conditions, terms, and limitations of the MDSPGP-5 herein do not qualify for this MDSPGP-5 and will require separate DA authorizations/permits. A completed Federal/State Joint Permit Application Form must be submitted to MDE for Corps evaluation under alternate Corps permit review procedures. Individual WQC and CZC concurrence are required where applicable from the State of Maryland before Corps permit issuance.

III. **Procedures:** Applicants who propose regulated activities must complete the Federal/State Joint Permit Application Form (application) in accordance with the application instructions, unless indicated otherwise. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and in accordance with appropriate guidance issued by the Corps. Applicants must submit the complete permit application to the Regulatory Services Coordination Office, Water Management Administration, Maryland Department of the Environment. General information and application forms can be obtained by calling the Regulatory Services Coordination Office at 1-800-876-0200. The application can also be printed from MDE's web site: http://www.mde.state.md.us/programs/Water/WetlandsandWaterways/PermitsandApplications/Pages/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.aspx. The complete application should be submitted by the applicant to the Regulatory Services Coordination Office at the earliest possible date. Submission of an application is not required for certain activities identified in Category A of the MDSPGP-5 Authorized Activity Index (Section IV.A.). All terms and conditions of the MDSPGP-5 still apply to these activities.

In reviewing the application materials for the proposed activity, the Corps will determine whether the activity authorized by the MDSPGP-5 will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 5,000 square feet and stream losses that exceed 200 linear feet and that require an application submittal for Corps authorization, unless the Corps determines in writing that either some other form of mitigation would be more appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. If the proposed activity requires an application submittal for Corps authorization and will result in a loss greater than 5,000 square feet of wetlands and/or 200 linear feet of stream channel, the project applicant is responsible for submitting an appropriate compensatory mitigation proposal with the application, unless a project-specific waiver is granted. For wetland losses of 5,000 square feet and stream losses of 200 feet or less that require an application submittal for Corps authorization, the Corps may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. . The Corps will consider the proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the

MDSPGP-5 and that the adverse effects on the aquatic environment are minimal, after considering the mitigation, the Corps will notify the permittee and include any conditions the Corps deems necessary. When mitigation is required, no work in waters of the United States may occur until the Corps has approved a specific compensatory mitigation plan.

A. **Federal, State, and Local Approvals:** Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-5. Federal, State or local jurisdictions may differ in some instances. This MDSPGP-5 may authorize projects that are not regulated by the State of Maryland (e.g., ephemeral streams), but may be regulated by the Corps. Required authorizations include, but are not limited to, the following State approvals, issued by the MDE, as applicable, which must be obtained in order for the MDSPGP-5 authorization to be valid:

1. Nontidal Wetlands authorization.

2. Waterway Construction authorization.

3. Tidal Wetlands authorization.

4. Water Quality Certification.

5. Coastal Zone Consistency.

B. **MDSPGP-5 Verification Procedures:**

1. **Category A (Corps Review Not Required):** Proposed activities that are subject to Corps jurisdiction and that are part of a single and complete project that results in no more than minimal individual and/or cumulative adverse environmental effects may proceed without review by the Corps, provided that all required State and local authorizations are obtained and the activities meet all terms and conditions of the MDSPGP-5, including the activity-specific impact limits and requirements identified in the Description of MDSPGP-5 Authorized Activities. Category A activities are shown on the MDSPGP-5 Authorized Activity Index (Section IV.A.). In all cases where an application is required, ONE of the following notifications must occur:

- The project applicant may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-5 and that work can proceed as a Category A activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-5, including activity-specific impact limits and requirements identified in the Description of MDSPGP-5 Authorized Activities, and any special conditions imposed by the Corps.

- Otherwise, the Corps will provide written notice to the applicant that an alternate Corps permit review process is required.

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

2. **Category B (Corps Review Required):** Applications for projects whose total impacts, both direct and indirect, as well as temporary and permanent, exceed the Category A activity's impact limits and/or do not comply

with the activity's specific terms and requirements, as specified in Section IV.B.1., and do not exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, will be reviewed by the Corps. If the Corps determines that the applicant's proposed project will result in no more than minimal individual and/or cumulative adverse environmental effects, meets the terms and conditions of the MDSPGP-5, and does not pose unresolved issues that would be of Federal interest (e.g., endangered or threatened species, historic properties, etc.), then the Corps will notify MDE and the applicant that it has determined that the proposed project is eligible for authorization under the MDSPGP-5, provided the required State and local authorizations are obtained. Category B activities also include activities located in or near Federally authorized civil works projects, located along and within 150 feet of the horizontal limits of a Federal navigation channel, grandfathered by the State from MDE permit requirements, exempt from MDE permit requirements or not regulated by MDE's Wetlands and Waterways Program, denials and violations, and those activities that require an individual EFH assessment. In addition, projects that have the potential to affect cultural resources or Federally listed threatened or endangered species or their critical habitat require an application submittal to the Corps for review under the Category B MDSPGP-5 review process or alternate Corps permit review process.

Category B applications will be coordinated with MHT, Maryland Department of Natural Resources (MD DNR), EPA, NMFS, FWS, and U.S. Coast Guard (USCG), if appropriate, to determine eligibility for authorization under the MDSPGP-5. The Corps will provide MDE, MHT, MD DNR, EPA, NMFS, FWS, and USCG, if appropriate, coordination notices for a 15-day review to comment upon whether authorization of the proposed projects under the MDSPGP-5 is appropriate. For each Category B project, the coordination notice will provide the following: project tracking number; description of the project and proposed impacts; location of work; project purpose; and the Corps contact person. EPA, NMFS, FWS, MD DNR, MHT, and USCG will provide their comments and recommendations, if any, to the Corps, with a copy to MDE. The resource agencies may request an extension of the 15-day comment period, provided the extension is requested within the 15-day comment period. MHT, MD DNR, EPA, NMFS, FWS, and USCG may provide project-specific objections to authorizing the proposed work under the MDSPGP-5 due to its impact on the aquatic environment or provide recommendations for special conditions, within their area of expertise and/or authority, to be included in the MDSPGP-5 verification.

Agency notification procedures are not required for the following activities if the project would otherwise meet the impact thresholds and activity-specific requirements of a Category A activity: projects located in or near Federally authorized Civil Works projects; projects located along and/or within 150 feet of the limits of a Federal navigation channel; projects grandfathered by the State of Maryland from MDE permit requirements; projects exempt from MDE permit requirements, or not regulated under MDE's Wetlands and Waterways Program; projects that have the potential to affect cultural resources; or projects that have the potential to affect Federally listed threatened or endangered species or their critical habitat. However, the Corps will consult directly with the appropriate agency to resolve the outstanding resource issue (e.g. the Corps will consult with MHT regarding cultural resource issues).

For those Category B projects that may adversely affect EFH, the Corps will provide NMFS a 30-day coordination notice, including an EFH assessment and project plans. Formal notification to NMFS will occur when NMFS receives the coordination notice from the Corps on the project. NMFS will provide EFH conservation recommendations as comments to this 30-day coordination notice to the Corps, with a copy to MDE. Conservation recommendations made by NMFS will generally be included as a MDSPGP-5 permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-5 process, the applicant will be notified in writing that an alternate Corps permit review process is required for the project.

The Corps will review these proposed projects, including consideration of whether or not compensatory mitigation should be required to replace the functions and/or acreage of aquatic resources lost due to unavoidable permanent impacts to wetlands and/or streams. After considering recommendations by MHT, MD DNR, EPA, NMFS, FWS, USCG, and the public, if applicable, the Corps will make one of the following determinations:

a. Additional information is required to review the proposed project;

b. Project is eligible for authorization under the MDSPGP-5;

c. Project is eligible for authorization under the MDSPGP-5, with special conditions; or

d. Project is ineligible for authorization under the MDSPGP-5 and, therefore, requires an alternate Corps permit review process.

When the Corps has made its determination, it will notify MDE and the applicant. The project applicant must not begin work until ONE of the following notifications has occurred:

- The project applicant may not begin work until the Corps provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-5 and that work can proceed as a Category B activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-5, including the activity-specific impact limits and requirements identified in the Description of MDSPGP-5 Authorized Activities, and any special conditions imposed by the Corps.

- Alternatively, the Corps may provide written notice to the applicant that the proposed work interferes with a Federally authorized civil works project, which includes Federal navigation projects. The Corps will coordinate with the applicant in order for the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-5. At that time, work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-5, including activity-specific impact limits and requirements identified in the Description of MDSPGP-5 Authorized Activities, and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternate Corps permit review process is required.

- Alternatively, the Corps or MDE may provide notice to the applicant that the proposed work may adversely affect EFH. The Corps will coordinate with the applicant in order for the applicant to implement EFH conservation recommendations detailing measures for avoiding, mitigating, or offsetting the impact of the activity on EFH. Conservation recommendations made by NMFS will generally be included as a MDSPGP-5 permit requirement by the Corps, and the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-5. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-5, including the activity-specific impact limits and requirements listed in the Description of MDSPGP-5 Authorized Activities, and any special conditions imposed by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-5 process, the applicant will be notified in writing that an alternate Corps permit review process is required for the project.

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

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

- Otherwise, the Corps will provide written notice to the applicant and MDE that an alternate Corps permit review process is required.

When a State public notice for a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, the project is located in Use III or IV waters or other sensitive habitats identified by State law or regulation), MDE will issue a public notice to EPA, NMFS, FWS, MD DNR, MHT, USCG, Corps, and the public for a 30-day review soliciting comments on the project. The resource agencies and the public will provide two copies of their comments and recommendations, if any; one copy to be sent directly to the Corps, and one copy to be sent directly to MDE. The State public notice will provide the following: project tracking number; description of the project and proposed impacts; location of the project; project purpose; MDE contact person; opportunity to request a hearing;

and the opportunity to request additional information, including plans. State public notices to the resource agencies and the Corps will include project plans. The Corps and the resource agencies may request an extension of the 30-day comment period, provided the extension is requested within the 30-day comment period.

3. **Agency Objection:** The Federal resource agencies (FWS, EPA, or NMFS) may object to authorizing a proposed project under the MDSPGP-5 and request that a specific project be evaluated under individual permit procedures within the 15-day agency notification (or 30-day EFH review and comment period for NMFS). The Corps will consider any comments from the Federal agency concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-5 and the need for avoidance and minimization to reduce the project's adverse environmental effects to a minimal level. If the Corps agrees that an individual permit review of the project is appropriate, the Corps will notify MDE and the applicant. If the Corps disagrees with an agency's recommendation that individual permit procedures are appropriate, the Corps will notify the agency of its intent to verify eligibility for authorization of the proposed project under the MDSPGP-5. The Federal agency, at its discretion, may then pursue the agency objection procedures described below.

When the Corps determination is inconsistent with the Federal resource agency's recommendation for an individual permit review, the Federal resource agency will send a written letter to the Corps within 15 calendar days from the close of the Corps' agency notification comment period or from the date of the Corps' notification that it does not concur with the agency's objection (whichever date is later), with the Regional Administrator/ Director's signature. The Federal resource agency's formal objection shall include the request for individual permit review (i.e., "kick out") of the project, the rationale supporting the request and recommendations to satisfy those concerns, a description of the resources and habitats at risk from the proposal, and elevation language, if the Federal agency wishes to reserve the right to request that the project be processed under an individual permit review. The Corps will attempt to resolve the objection through expanded consultation with the Federal agency within 30 days of receipt of the Regional Administrator's/ Director's written objection. If the Corps cannot resolve an agency objection within 30 days, the application will not qualify for verification for authorization under the MDSPGP-5 and an individual permit review process will be required. The Corps will notify MDE and the applicant that the project requires an individual permit review. However, should all objections be resolved, the project may be verified for authorization under the MDSPGP-5. This verification may include project specific special conditions to protect the public interest.

IV. **MDSPGP-5 Categories:**

A. MDSPGP-5 Authorized Activity Index:.

2. Reserved

B. Description of MDSPGP-5 Authorized Activities:

1. **Category A and Category B Activities:** The following activities are authorized under the MDSPGP-5 provided the proposed regulated activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-5 and the following applicable Category A and Category B activity-specific description(s) and requirement(s). Work qualifying for authorization under category A of the MDSPGP-5 does not always require submittal of an application for Corps authorization. The requirement for an application submittal is noted under the requirements of each activity. **NOTE -** Any required application is to be submitted to MDE's Regulatory Services Coordination Office. In the following Authorized Activities, this has been abbreviated as MDE.

a. **Boating and Navigation-Related Projects, Structures, and Activities:** The projects, structures, and activities listed below must comply with all activity-specific impact limits and requirements, in addition to all of the general conditions of this general permit.

(1) **Channel and Harbor Navigation Aids**: Authorizes placement of aids to navigation and regulatory markers (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

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

(b) **Category B Impact Limits and Requirements:** See Sections II.D and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(2) **State Regulatory Markers:** This activity authorizes placement, by the State of Maryland, of regulatory and informational markers that do not require approval by the USCG (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(3) **Piers:** This activity authorizes private and commercial piers (e.g., piers associated with aquaculture) that are not associated with marinas, and allows for the addition of boat lifts and personal watercraft lifts to an existing authorized boat slip. This activity does not authorize marina piers, community piers, publicly-owned piers, or governmental piers. Compliance with the following design conditions are required for the entire project, including the proposed and existing, previously authorized structures that are being rehabilitated (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) This activity authorizes only 1 pier and 4 boat hoists or lifts, and 2 personal water craft lifts per property.

(ii) This activity does not authorize individual floating piers.

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

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

(v) If the pier is crossing open waters, it must not exceed 6 feet in width. If the pier is crossing areas of vegetated wetlands, it must not exceed 3 feet in width and must be constructed a minimum of 3 feet above the wetland surface elevation.

(vi) Piers with 6-foot-wide decking that cross open waters must have their decking constructed a minimum of 4 feet above mean low water to minimize shading of submerged aquatic vegetation. Alternatively, decking of a pier over open tidal waters must be constructed no lower than 3 feet above mean low water if the deck width does not exceed 5 feet.

(vii) The total area of all fixed and floating auxiliary platforms including "T" heads, "L" heads, and step down platforms must not exceed 300 square feet, including the segment of the main pier section to which the platform is attached, and must not be located over vegetated wetlands.

(viii) Floating auxiliary structures authorized by this activity are limited to floating finger piers, including small floating personal water craft piers and platforms; and floating gangways provided the total square footage of these floating structures does not exceed 300 square feet for any one project, including the segment of the main pier section to which the platform is attached.

(ix) Platforms must not be constructed within the landward 50% of the main pier section except in canals where a parallel walkway may be constructed adjacent to an existing or proposed bulkhead.

(x) Platforms proposed adjacent to an existing or proposed bulkhead within a canal must be parallel to the bulkhead and must not exceed 4 feet in width.

(xi) The project must include no more than 6 mooring piles and create no more than 4 boat slips, including boat lifts and 2 personal water craft lifts, overall.

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

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

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

(xv) The pier must not include more than 2 three-foot-wide finger piers, and the finger piers must not exceed the proposed slip length. Finger piers must be constructed on the landward side of the "T" head or "L" head.

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

(xviii) Piers must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high water shoreline and/or vegetated tidal wetlands. In addition, the pier must not come within 20 feet of any marked or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of the near design edge (shown in the Navigation Setback Guidance) of a Federal navigation channel or further channelward than the neighboring piers (within a quarter mile of the proposed project site along the same shoreline), whichever is less.

(b) Category B Impact Limits and Requirements:

(i) This activity authorizes private piers that exceed design criteria of Category A and meet the specific dimensions specified in Category B. Design criteria would include the single and complete project with both existing authorized and proposed aspects of the structure.

(ii) This activity authorizes private floating piers built to access the waterway.

(iii) Only 1 pier per property can be authorized under the MDSPGP-5.

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

(vi) Piers must not exceed 8 feet wide, a 400-square-foot platform including Ts, Ls, and step down platforms, 8 mooring piles, 4 three-foot-wide finger piers, and/or create more than 10 slips, including boat lifts and personal water craft lifts.

(vii) Finger piers must not exceed slip length and shall be constructed on the landward side of the “T” head or “L” head.

(viii) Construction of open-pile walkways across tidal and nontidal emergent marsh can encourage establishment of invasive species such as common reed (*Phragmites australis*). The following measures for walkway construction across emergent marshes shall be implemented to the maximum extent practicable to minimize damage to the marsh surface and vegetation, and minimize the risk of introducing invasive species.

(1) Align the walkway for the shortest practicable crossing of a marsh;

(2) Align the walkway away from guts, small creeks, and other wet/soft surface areas of a marsh;

(3) Align the walkway through marsh areas dominated by invasive species, such as common reed;

(4) Use less intrusive construction methods, such as end-on construction, or manual pile driving from small mats;

(5) For walkways across regularly flooded, non-persistent freshwater marshes, limit construction activities to non-growing season months (November - March).

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

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

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

(iii) Authorization of the pier is based upon current water depths; propeller dredging is not authorized.

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

(v) Any floating structure (i.e., pier, finger pier, auxiliary structure, jet-ski platform, etc.) must include stoppers/blocks on the structure or pilings to prevent the structure from sitting on the bottom of the waterway during low water conditions.

(vi) Whenever possible, construction of the pier/platform shall be conducted from uplands, open water, or from the structure itself. Construction mats shall be used if equipment is placed in vegetated wetlands and must be removed within 14 calendar days following completion of construction of the pier and the wetland area restored to its preconstruction condition if damaged.

(vii) Construction mats are not authorized by this activity. Impacts associated with construction mats may be authorized under Category A of Section IV.B.1.e.(7), Temporary Construction Access, Stream Diversion, and Dewatering, or if the project is ineligible for Category A, the single and complete project, including the proposed pier structure and temporary construction access, will be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(viii) Auxiliary structures such as gazebos, tool sheds, etc., are not authorized by this MDSPGP-5 and will be reviewed under alternate Corps permit review procedures if they affect waters of the United States.

(ix) The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for such damage.

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

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

(xii) The project must either have received a county variance or meet the minimum extended property line setback requirements established by the local jurisdiction in which the activity is proposed. For those piers that do not meet these requirements, an alternate Corps permit is required. In localities where there are no setback requirements, the structure(s) must be constructed in a manner that does not obstruct ingress and egress from adjacent properties.

(xiii) Alternate Corps permit review procedures are required for private piers that may cause more than a minimal adverse effect on navigation.

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

(4) **Marina/Community Piers Reconfiguration:** This activity authorizes reconfiguring an existing, previously authorized marina or community pier, including construction of a boat lift and finger pier at an existing, previously authorized boat slip and under Category B, the construction of new boat slips within the existing marina/community pier footprint (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

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

(ii) This Category A activity authorizes the construction of boat lifts within existing, authorized boat slips.

(b) **Category B Impact Limits and Requirements:**

(i) This Category B activity authorizes marina reconfigurations that propose additional slips within the existing marina footprint.

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

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

(ii) This activity does not authorize dredging.

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

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

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

(vi) The use of any new floating structure (i.e., pier, finger pier, auxiliary structure, personal water craft platform, etc.) must include stoppers/blocks on the structure or pilings to prevent the structure from sitting on the bottom of the waterway during low water conditions.

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

(5) **Boat Ramp Construction, Repair, and Expansion:** This activity authorizes discharges of dredged or fill material and the construction of structures such as wing walls and access piers associated with construction of new boat ramps and the repair and expansion of existing boat ramps (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

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

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

(iii) Boat ramps and associated discharges must not be placed in special aquatic sites, including wetlands.

(b) **Category B Impact Limits and Requirements:**

(i) The boat ramp must not exceed 24 feet in width.

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

(iii) The discharge into waters of the United States must not exceed 50 cubic yards.

(iv) All boat ramps and associated discharges must be designed to eliminate or minimize impacts to special aquatic sites, to include wetlands.

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

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

(ii) This activity authorizes the discharge of concrete, rock, crushed stone, or gravel into forms, or placement of pre-cast concrete planks or slabs, or other suitable material (e.g., timber) within the limits of the boat ramp only (e.g., for bedding). This material may be placed over base materials which must be crushed stone, gravel, or other suitable material.

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

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

(v) All excavated material must be removed to upland (non-wetland) areas and stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(vi) This activity does not authorize use of unsuitable material or materials not structurally sound.

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

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

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

(x) Access piers must not exceed 3 feet in width.

(xi) Access piers must be constructed a minimum of 3 feet above the mean low water level.

(xii) Access piers must be directly abutting the boat ramp and must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high water shoreline and/or vegetated tidal wetlands or the minimum necessary to provide adequate access to the boat ramp, whichever is less.

(6) **Mooring Buoys**: This activity authorizes placement of mooring buoys (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements**: No application is required for Corps authorization. However, all mooring buoys must adhere to the MD DNR restrictions on where mooring buoys may be placed.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

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

(i) Only non-commercial, single-boat mooring buoys are authorized by the activity. Commercial mooring buoys are not authorized under this activity and are instead subject to alternative Corps permit review procedures.

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

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

(7) **Structures in Fleeting and Anchorage Areas:** This activity authorizes structures, buoys, floats, and other devices placed within existing, authorized anchorage areas or fleeting areas to facilitate mooring vessels (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

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

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

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

(8) **Temporary Recreational Structures:** This activity authorizes temporary recreational buoys, markers, small floating docks, and similar structures placed for seasonal recreational use or for recreational use during special events, such as water skiing competitions and boat races (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

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

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

(iii) At Corps reservoirs, the reservoir manager must approve each buoy or marker individually.

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

(b) **Category B Requirements**: If a project is not eligible for Category A, it must be reviewed under Category B or an alternate Corps permit review procedures, as appropriate.

(c) **Requirements Applicable to Both Category A and Category B Activities:** Application must be submitted to MDE for Corps authorization.

(9) **Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters**: This activity authorizes dredging below the plane of the mean high water mark and removal of accumulated sediment as part of a single and complete project for the maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. The maintenance dredging area must have been authorized by the Corps and the dredging completed in accordance with the terms and conditions of the Corps authorization (Sections 10 and 404; limited to all tidal waters).

(a) **Category A Impact Limits and Requirements:**

(i) The proposed dredge area must not exceed 1/2 acre (21,780 square feet) and involve the removal of no more than 500 cubic yards of material.

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

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

(b) **Category B Impact Limits and Requirements:**

(i) The proposed dredge area must not exceed 1.0 acre (43,560 square feet) in area.

(ii) Mechanical and hydraulic dredging (Section 10/404) are authorized under Category B or alternate Corps permit review procedures, as appropriate.

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

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

(ii) Previous dredging within the project area must have been authorized by the Corps and completed no more than 5 years prior to the application date of the current proposal. Additionally, the Corps permit number, a copy of the previous verification, and documentation of completion of the dredging may be required.

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

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

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

(vi) The disposal of dredged material into wetlands and waters of the United States is not authorized by this activity.

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

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

(10) **New Minor Dredging in Tidal Waters:** This activity authorizes new minor dredging below the plane of the mean high water mark as part of a single and complete project (Sections 10 and 404; limited to all tidal waters).

(a) **Category A Impact Limits and Requirements:**

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

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

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

(iv) Existing depths within the proposed dredge area must exceed 3 feet below mean low water.

(v) No dredging of or disposal into intertidal mudflats, wetlands, shellfish beds, and sites that support submerged aquatic vegetation (including sites where submerged

aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas is authorized.

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

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

(b) **Category B Impact Limits and Requirements:**

(i) The dredged area must not exceed 1/2 acre (21,780 square feet).

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

(iii) The applicant shall provide documentation regarding the presence, absence, or proximity of submerged aquatic vegetation relative to the proposed new dredging footprint and immediate vicinity. Information submitted with the application shall include all species that may be present at a project site, including such species as horned pondweed (*Zannichellia palustris*) with a brief spring growing season (late April through June). The applicant may refer to the Virginia Institute of Marine Science (VIMS) aerial surveys for obtaining such information. The applicant should also refer to other reliable sources (e.g., groundtruthing during late April through June 15, VIMS aerial survey citizens observations) to comply with these SAV information needs, particularly for information on presence of horned pondweed since this SAV species does not generally show up in VIMS surveys. Horned pondweed is less prevalent or does not occur upstream of the geographical exclusion lines shown on the Low Salinity Waters in Maryland Chesapeake Bay Map (Appendix B) and tidal waters of the Maryland Atlantic Coastal Bays. Therefore, documentation regarding the presence or proximity of horned pondweed is not required in these areas. However, documentation for the presence/absence of other submerged aquatic vegetation species is required in these areas.

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

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

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

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

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

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

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

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

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

(1) **General Maintenance:** This activity authorizes discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill. This activity authorizes minor deviations in the configuration of the structure or filled area, including changes in materials, construction techniques, current construction codes, or safety standards that are necessary to make the repair, rehabilitation, or replacement, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. Currently serviceable means that the structure or fill is usable in its current condition, or with some maintenance, but not so degraded as to essentially require reconstruction. This activity also authorizes the removal of accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). This activity does not apply to new stream restoration projects. This activity also authorizes repair, rehabilitation, or replacement in-kind of structures or fills destroyed or damaged by storms, floods, fire or other discrete events. This activity authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization except for replacement of previously authorized, currently serviceable structures, located along a Federally authorized navigation channel, that are destroyed by an act of nature or other sudden event, or for modification of previously authorized, currently serviceable structures located along Federally authorized navigation channels. In these cases, an application is required to be submitted to the Corps for review under Category B or alternate Corps permit review procedures, as appropriate.

(ii) The total temporary (i.e., construction impacts including stream diversion devices, construction mats, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(iii) The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend any further than 200 linear feet in any direction from the structure.

(iv) Any impact to waters of the United States, including wetlands, associated with this activity is to be minimized below these impact limits to the greatest extent possible.

(v) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) Application must be submitted to MDE for Corps authorization. The application must include information regarding the original design capacities and configurations of the structures and fills (e.g., outfalls, intakes, impoundments, canals, culverts, etc.).

(ii) The total temporary (i.e., construction impacts including stream diversion devices, construction mats, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(iii) Removal of sediments must not extend any further than 500 linear feet in any direction from the structure.

(iv) Any impact to waters of the United States, including wetlands, associated with this activity is to be minimized below these impact limits to the greatest extent possible.

(v) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition (1) above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waive the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with condition (1) above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

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

(i) An application is required to be submitted to the Corps for review under Category B for authorization of previously authorized, currently serviceable structures located along Federally authorized navigation channels that are destroyed by an act of nature or other sudden event or that are proposed to be modified.

(ii) The repair, rehabilitation, or replacement activity is limited to the original dimensions or configuration, except for minor deviations due to changes in materials, construction techniques, or current construction codes or safety standards. Minor deviations in the configuration of the structure or filled area must not exceed the minimum necessary to make the repair, rehabilitation, or replacement.

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

(iv) Culverts must be adequately sized to allow for the passage of ordinary high water with the depression and invert restrictions taken into account.

(v) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(vi) Any new bank stabilization measures that were not included in the previously authorized structure or fill will require a separate authorization from the Corps.

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

(viii) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills destroyed or damaged by storms, floods, fire, or other discrete events must be started or under contract to start within 2 years of the date that they were damaged or destroyed.

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

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

(xi) This activity does not authorize any maintenance dredging, beach restoration, stream restoration, stream relocation, or stream channelization, and/or repair or replacement of bulkheads.

(xii) This activity does not authorize blasting or other forms of uncontained in-water demolition.

(xiii) All excavated materials must be deposited and retained in an upland (non-wetland) area.

(xiv) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(xv) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(xvi) All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

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

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is limited to the minimum necessary to protect the structure or to ensure the safety of the structure and are not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers, and other open waters.

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

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is limited to the minimum necessary to protect the structure or to ensure the safety of the structure and are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

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

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

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

(ii) The armoring must be the minimum necessary to protect the structure or to ensure the safety of the structure.

(iii) This activity does not authorize stream channelization or stream relocation projects. This activity does not authorize the construction of any dams or dikes.

(iv) Material used (in order of preference) must be clean stone, broken concrete, or grout bags. If broken concrete is used for armoring, it must be clean and free of rebar or other protruding reinforcement.

(v) This activity does not authorize dredging.

(vi) The armoring material must not extend into a marked, lighted, charted, or Federal navigation channel.

(vii) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(viii) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(ix) All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-

of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

(x) The following conditions are applicable to Coastal Plain Streams (tidal and nontidal), and Piedmont streams in Cecil and Harford Counties:

(1) Armoring and/or scour protection for bridges, arches, and culverts shall provide a low flow channel that will pass anadromous fish during the spring migratory season (February 15 - June 15). The low flow channels shall provide a flow depth not less than 12 inches, and never less than 8 inches during the spring migratory period. For armoring culverts of diameter equal to or less than 24 inches, flow depth in the low flow channel shall be comparable to depths in adjacent, undisturbed reaches of stream. Flow velocities in the low flow channel should also be comparable to flows in adjacent, undisturbed reaches of stream, as experienced during the spring migratory season. For projects where on-site conditions (e.g., design of the existing culvert or other crossing structure) limit the ability to construct a low flow channel with the latter specifications, the applicant shall submit a narrative, along with their application, documenting site conditions and limitations that prohibit compliance with these low flow channel specifications.

(2) Armoring and/or scour protection for bridges, arches, and culverts that cannot be constructed with low flow channels in accordance with the requirements in *(1)* above, are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(3) **Bulkhead Repair or Replacement**, including Stone Toe Protection**:** This activity authorizes discharges of dredged or fill material associated with repair or replacement of deteriorating or damaged bulkheads or other forms of vertical walls which are still functional. This activity also authorizes the placement of riprap along the base of a replacement or existing bulkhead or other forms of vertical walls for the purpose of toe protection (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The bulkhead repair or replacement, when using wood or corrugated sheeting, must not extend more than 18 inches channelward of the existing structure as measured from the channelward edge of the existing bulkhead piling to the inner-most face of the proposed bulkhead sheeting.

(iii) Discharges associated with the repair or replacement of a bulkhead must not exceed an average of 1 cubic yard per running foot placed along the bank below the plane of the mean high water mark.

(iv) Stone toe protection placed along the base of a replacement or existing bulkhead must not extend more than 10 feet channelward of the bulkhead.

(v) No discharge of dredged or fill material may be placed into vegetated wetlands or submerged aquatic vegetation.

(b) **Category B Impact Limits and Requirements:**

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

(ii) The bulkhead repair or replacement, when using wood or corrugated sheeting must not extend more than 3 feet channelward of the existing structure, as measured from the channelward edge of the existing bulkhead piling to the inner-most face of the proposed bulkhead sheeting.

(iii) Stone toe protection placed along the base of a replacement or existing bulkhead must not extend more than 10 feet channelward of the bulkhead or the minimum necessary to provide adequate stabilization.

(iv) Impacts to waters of the United States are not to exceed 10,000 square feet.

(v) The total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the bulkhead repair along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long bulkhead).

(vi) This activity does not authorize the filling of wetlands behind free-standing bulkheads that have never been backfilled.

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

(i) No material may be placed in excess of the minimum needed for erosion protection.

(ii) The linear length of the replacement bulkhead/wall may not extend along the shoreline beyond the ends of the existing bulkhead/wall.

(iii) The existing bulkhead/wall must be functional.

(iv) Any stone used for toe protection must be clean and free of toxins.

(4) **Maintenance of Tidal Roadside Ditches:** This activity authorizes maintenance clean-out of tidally influenced roadside drainage ditches and their outlets. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Section 10, not subject to Section 404; limited to all tidal wetlands and waters).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 10,000 square feet and/or 500 linear feet of drainage ditch being maintained.

(b) **Category B Impact Limits and Requirements**:

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

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of drainage ditch being maintained.

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

(i) This activity authorizes work only in roadside ditches and their outlets that are subject to the ebb and flow of the tide.

(ii) This activity does not authorize stationing equipment in the ditch. Work should be done from the bank or road crossing using the appropriate equipment, such as an excavator arm or boom.

(iii) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch from its original design dimensions and configurations. Maintenance cannot expand the area drained by the ditch beyond original design.

(iv) Excavated material must be placed in an upland disposal site, must be properly contained and stabilized, and placed where the material: (1) will not wash back into the ditch and/or adjacent tidal waters; (2) will not wash into and/or fill adjacent wetlands; (3) will not adversely impact the function of the natural floodplain; and (4) will not create a restriction or impediment to the movement of aquatic species indigenous to the water, or to the passage of normal or expected high flows and tidal exchanges. Excavated material may be placed on existing ditch banks/berms.

(v) Any adjacent wetlands temporarily disturbed during maintenance clean-out operations must be restored to their pre-existing elevations and contours to enhance reestablishment of wetlands. However, placement of the excavated materials in waters of the United States, including wetlands, is not authorized by this activity.

(vi) The activity must not block or impede the movements of anadromous or resident fish species. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. The width of any temporary fill must be limited to the minimum necessary for temporary construction access. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(vii) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(viii) All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

(5) **Maintenance of Mosquito Control Ditches:** This activity authorizes the maintenance clean-out of existing mosquito control tidal ditches and tidal ponds and their radial ditches. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Section 10 and Section 404 for placement on marsh, in accordance with the activity-specific requirements; limited to all tidal ditches and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 10,000 square feet and/or 500 linear feet of drainage ditch being maintained.

(b) **Category B Impact Limits and Requirements**:

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

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of drainage ditch being maintained.

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

(i) The acreage and linear feet of impact to tidal ditches and tidal wetlands includes the excavated area, plus areas filled above wetland elevations with sidecasting.

(ii) This activity authorizes work only in mosquito control tidal ditches, tidal ponds, and their radial ditches that are subject to the ebb and flow of the tide.

(iii) Suitable equipment that is not stationed in the ditch, preferably a rotary ditcher, will be used for the clean-out activities. When a rotary ditcher is not available or cannot be used, other equipment types are acceptable provided that material taken from the ditches is graded to as near wetland level as possible. Material dug with crane or backhoe should be placed on alternate sides of the ditch so as not to form a continuous line of excavated material, which would impede water movement across the wetland surface.

(iv) The excavated material must be placed in a manner to minimize disturbance to adjacent wetlands. Placement methods include spreading the material thinly on the wetland surface and grading the material as low as possible without undue disturbance to the nearby vegetated wetland, or placing the material in unvegetated mosquito-breeding low pockets.

(v) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch from its original design dimensions and configurations. Maintenance cannot expand the area drained by the ditch beyond original design.

(vi) The excavated material must be placed in locations where the material does not: (1) wash back into the ditch; (2) restrict or impede the movement of aquatic species indigenous to waters or the passage of normal or expected high flows; and (3) adversely impact the functions of the natural floodplain.

(vii) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(viii) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(ix) All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

(6) **Culvert Pipe Grouting/Sealing and Joint Repairs:** This activity authorizes the discharge of grout paving material associated with repairs to degraded pipe and box culverts. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting (Sections 10 and 404; streams/rivers only).

(a) **Category A Impact Limits and Requirements:**

(i) The total permanent and temporary impacts to streams (i.e., construction impacts including the stream diversion devices and temporary dewatered areas) is limited to the minimum necessary to repair the structure or to ensure the safety of the structure and are not to exceed 10,000 square feet and/or 1,000 linear feet of streams.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary (i.e., construction impacts including the stream diversion devices, etc.) and permanent impacts to streams are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams.

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

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

(ii) The total temporary (i.e., construction impacts, including stream diversion devices, etc.) and permanent impacts to streams is limited to the minimum necessary to repair the structure or to ensure the safety of the structure.

(iii) All work must be conducted in dry conditions using an appropriate stream diversion technique.

(iv) Base flow must be maintained in all intermittent and perennial streams.

(v) The completed activity must not block or impede the movements of aquatic species (e.g., resident fish, anadromous fish, etc.).

(vi) The activity must not impound the stream or river.

(vii) This activity does not authorize installation of new culverts or work on existing bottomless arch culverts and bridge spans.

(viii) This activity does not authorize any impacts to tidal or non-tidal wetlands.

(ix) The activity must not block or impede the movements of anadromous or resident fish species. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. The width of any temporary fill must be limited to the minimum necessary for temporary construction access. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(x) Upon completion of the project, all temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

c. **Underground and Overhead Utility Line Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities, including the associated excavation, backfill, or bedding for the utility lines in waters of the United States, provided there is no change in pre-construction contours. This activity also authorizes mechanized land clearing; construction of temporary and permanent access roads for construction and maintenance of the utility line; and construction of foundations for overhead utility towers, poles, and anchors in waters of the United States.

(1) **Utility Lines:** This activity authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance. Utility lines also include any cable, line, or wire for the transmission of electricity, telephone and telegraph messages, radio, television, or other communication. The term “utility line” does not include activities which drain a water of the United States, such as drainage tile, or French drains. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility, including a defined starting and ending point of the proposed project, and a defensible purpose (refer to definition of “independent utility” in definitions section). Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, Chesapeake Bay, all tidal tributaries, etc.) or tidal wetlands.

(iii) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) The utility line must make a perpendicular crossing of any stream channel, except for instances where the existing on site conditions would require a diagonal crossing of the waterway.

(v) Open-cut pipeline installation within adjacent jurisdictional wetlands must not parallel a stream channel for more than 100 feet along the ordinary high water mark.

(vi) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed and generally does not require any riprap protection in-stream. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(vii) All utility line activities, including access roads, constructed or installed in, over, or under navigable waters of the United States, including navigable nontidal Section 10 waters of the United States, and all tidal wetlands, require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other tidal and nontidal open waters.

(ii) Where the proposed utility line is constructed or installed in, under, or over navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

(iii) For all submerged utility lines across navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of the Federal navigation channel shall be shown in relation to the proposed utility line.

(iv) For aerial electric power transmission lines crossing navigable waters of the United States, the minimum clearances listed under General Conditions (VII.A.10.) must be followed.

(v) For overhead utility lines authorized by this MDSPGP-5 activity, a copy of the application and MDSPGP-5 verification will be provided to the Department of Defense Siting Clearinghouse by the Corps, to evaluate potential effects on military activities.

(vi) As built drawings: Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water

of the United States, the permittee must furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plan coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of the survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

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

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

(ii) Impacts shall be minimized by selection of a utility alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable. Directional drilling, jack and bore, missile, or similar methods are the preferred method of installation.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside wetlands and forested tracts or on the edges of wetlands and forested tracts where possible.

(iv) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(v) Utility lines installed below the plane of the ordinary high water mark of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams.

(vi) In wetlands, the top 6 to 12 inches of the trench must be backfilled with the top 6 to 12 inches of topsoil removed from the trench.

(vii) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(viii) The activity must not block or impede the movements of anadromous or resident fish species. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(ix) Immediately after completion of construction of the utility line through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(x) Upon completion of the project, all temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed

within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

(xi) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(xii) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to offset the adverse effects of the project. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of dredged or fill material.

(xiii) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e.(1), Minor Nontidal Fills or alternate Corps permit review procedures, as appropriate.

(xiv) For directional drilling activities authorized by this MDSPGP-5 activity, a remediation plan for the inadvertent returns of drilling muds must be provided with the application for review and approval.

(2) **Foundations for Overhead Utility Line Towers, Poles, and Anchors:** This activity authorizes mechanized land clearing, the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose (refer to definitions section).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, Chesapeake Bay, all tidal tributaries, etc.) or tidal wetlands.

(iii) Overhead utility line towers, poles, and anchors must not be located within channels of nontidal streams (below the ordinary high water line) to avoid adverse effects on the morphometry of the stream channel.

(iv) All utility line activities, including access roads constructed or installed in, over, or under navigable waters of the U.S., including navigable nontidal Section 10 waters of the United States, and all tidal wetlands, require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other tidal and nontidal open waters.

(ii) Where the proposed work is constructed or installed in, over or under navigable waters of the United States, copies of the application and permit verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

(iii) For aerial electric power transmission lines crossing navigable waters of the United States, the minimum clearances listed under General Conditions (VII.A.10.) must be followed.

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

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

(ii) Impacts shall be minimized by selection of a location that avoids and minimizes wetland and waterway impacts to the maximum extent practicable.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing the utility project outside wetlands and forested tracts or on the edges of wetlands and forested tracts where possible.

(iv) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(v) Immediately after completion of construction of the utility project through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(vi) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(vii) When mechanized land clearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to ensure that the activity results in minimum adverse effects on the aquatic environment. This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.

(viii) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e(1), Minor Nontidal Fills, or alternate Corps permit review procedures, as appropriate.

(3) **Utility Access Roads:** This activity authorizes the mechanized land clearing and construction of access roads for the construction and maintenance of utility lines, including overhead power lines. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose (refer to definitions section).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States due to construction of all access roads associated with construction of the utility line are not to exceed 5,000 square feet and/or 200 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, Chesapeake Bay, all tidal tributaries, etc.) or tidal wetlands.

(iii) This Category A activity does not authorize discharges into nontidal wetlands adjacent to tidal waters.

(iv) All utility line activities, including access roads constructed or installed in, over, or under navigable waters of the United States, tidal waters, or in nontidal wetlands adjacent to tidal waters, require review under Category B or alternate Corps permit review procedures, as appropriate.

(v) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(vi) Any temporary crossing that must remain in place for over 1 year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(vii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not

eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to tidal and nontidal waters of the United States due to construction of all access roads associated with construction of the utility line are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(ii) Where the proposed access road is constructed or installed in or over navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps, when appropriate, to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the access road to protect navigation.

(iii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition *(1)* above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waive the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with requirement *(1)* above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

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

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

(ii) Impacts shall be minimized by selection of an alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines and access roads outside wetlands and forested tracts or on the edges of wetlands and forested tracts, where possible.

(iv) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(v) Utility line access roads installed below the plane of the ordinary high water mark of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen or stone cofferdams.

(vi) Immediately after completion of construction of the utility line and access roads through the wetland areas, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices.

(vii) Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations and revegetated with native wetland species.

(viii) Exposed slopes and stream banks must be stabilized and revegetated, with native, woody species, immediately after construction of the utility line is completed.

(ix) All temporary and permanent road crossings must be the minimum width necessary for the crossing. Access roads must be constructed as near as possible to preconstruction contours and elevations (e.g., at grade contour roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

(ix) Access roads used solely for construction of the utility line must be removed upon completion of the work. Any temporary crossing must be removed in its entirety within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions date. The areas affected by temporary fills must be returned to pre-construction elevations and revegetated with native species.

(x) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(xi) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to offset the adverse effects of the project. This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.

(xii) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e(1), Minor Nontidal Fills, or alternate Corps permit review procedures, as appropriate.

d. **Linear Transportation Activities:** All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes discharges of dredged or fill material associated with new construction, expansion, modification, or improvement of temporary and permanent linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways), which cross waters of the United States, including streams and wetlands. This activity cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers. (Sections 10 and 404; all waters of the United States). Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

New crossings of all waters of the United States will be reviewed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation may be required to support the preferred crossing method.

(1) **Category A Impact Limits and Requirements:**

(a) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(b) This activity can authorize multiple road crossings provided that the total temporary and permanent impact of all of the crossings meets the 5,000 square feet and 200 linear feet impact limit.

(c) This Category A activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, Chesapeake Bay, all tidal tributaries, etc.), tidal wetlands, or in nontidal wetlands adjacent to tidal waters. Category B or alternate Corps permit review procedure is required..

(d) Category B or alternate Corps permit review procedures are required for stream relocation projects that do not propose natural stream design to relocate impacted streams.

(e) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(f) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(i) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(ii) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(iii) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition (i) above are not eligible for Category A and

must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(2) **Category B Impact Limits and Requirements:**

(a) The total temporary and permanent impacts to tidal and nontidal waters of the United States are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(b) Category B or alternate Corps permit review procedures are required for any impacts to navigable waters, including navigable nontidal Section 10 waters of the United States (e.g., Potomac and Susquehanna Rivers, etc.), tidal wetlands, and nontidal wetlands adjacent to tidal waters of the United States.

(c) Where the proposed work is constructed or installed in navigable waters of the United States, copies of the application and MDSPGP-5 verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the crossing to protect navigation.

(d) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(i) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(ii) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(iii) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition (i) above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waives the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(iv) If countersinking of the culvert or footer is not practicable in accordance with requirement (i) above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency, National Marine Fisheries Service, Habitat Conservation Division, for recommendations about the measures to be taken to allow for migratory fish passage.

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

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

(b) The width of the fill must be limited to the minimum necessary for the crossing.

(c) The crossing must not be used as a berm for a permanent impoundment.

(d) Exposed slopes and stream banks must be stabilized and revegetated, with native, woody species, immediately after construction of the road crossing is completed

(e) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(f) Any temporary crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions.

(g) Any streams or wetlands impacted for temporary roads, or other temporary activities or structures, such as stream diversion devices, must be returned to pre-construction conditions, which includes contours, elevations, stream substrate, and revegetation with native wetland species.

(h) Stream relocation using natural stream design is generally considered to be self-mitigating.

e. **Fill Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

(1) **Minor Nontidal Fills:** This activity authorizes discharges of dredged or fill material in nontidal wetlands and nontidal streams. (Sections 10 and 404; limited to nontidal wetlands and streams, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.)

(a) **Category A Impact Limits and Requirements**: The total temporary and permanent impacts to waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(b) **Category B Impact Limits and Requirements**: The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

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

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

(ii) This activity authorizes work only in nontidal wetlands, streams, rivers, and other nontidal open waters.

(iii) If there is a specific activity for the proposed work type, this activity does not authorize types of work for which there are specific Category A/B activities, such as Linear Transportation Activities, Utility Lines, etc.

(iv) This activity does not authorize stream restoration projects. This activity does not authorize construction associated with mitigation banks or in-lieu fee mitigation projects.

(v) This activity does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, weirs, dams, water withdrawals, or water diversions. This activity also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. It does authorize impacts for the purpose of enhancing farmed wetlands located in agriculture fields or restoring or enhancing hydrology to a prior-converted wetland.

(2) **Agricultural Activities:** This activity authorizes discharges of dredged or fill material into waters of the United States for the purpose of improving agricultural production, including construction of building pads for farm buildings, and construction of tide gates designed to prevent the encroachment of salt water into agricultural drainage ditches. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities. This activity does not authorize construction of farm ponds or aquaculture ponds in nontidal streams (Section 404; nontidal waters only). Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This activity may authorize those regulated agricultural activities that do not qualify for the Clean Water Act Section 404(f)(1) exemptions because of the recapture provision at Section 404(f)(2).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes wetlands, streams, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity does not authorize discharges into nontidal wetlands adjacent to tidal waters. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes wetlands, streams, and other open waters, are not to exceed 1/2 acre (21,780 square feet and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in nontidal streams.

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

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

(ii) The term “farm tract” refers to a parcel of contiguous land under one ownership, which is operated as a farm or part of a farm and has been identified by the Farm Service Agency as such. (See General Condition VII.A.6. concerning “single and complete projects.”)

(iii) For discharges into waters of the United States to improve agricultural production, if the permittee is a United States Department of Agriculture (USDA) program participant, they must: (a) obtain a categorical minimal effects exemption, minimal

effect exemption, or mitigation exemption from Natural Resources Conservation Service (NRCS) in accordance with the provisions of the Food Security Act of 1985, as amended, (b) have a NRCS-certified wetland delineation, and (c) implement an NRCS-approved compensatory mitigation plan that fully offsets losses of waters of the United States, if required.

(iv) For discharges into waters of the United States to improve agricultural production, if the permittee is not a USDA program participant, a compensatory mitigation proposal must be included to offset losses of waters of the United States.

(v) This activity does not authorize any work in perennial streams.

(vi) This activity does not regulate discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the CWA, as described in DA regulations at 33 CFR 323.4.

(vii) For the construction of building pads for farm buildings, only wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) may be impacted.

(viii) Tide gates must be placed as close as possible to the affected agricultural field.

(ix) The activity must not block or impede the movements of anadromous or resident fish species.

(3) **Soil Investigations, Scientific Measurement Devices, and Survey Activities:** This activity authorizes discharges of dredged or fill material for soil investigations and survey activities. Authorized survey activities include core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil survey and sampling, sample plots or transects for wetland delineations, percolation tests for sewage disposal fields, survey markers or survey monuments, piezometers and groundwater monitoring devices, and historic resources surveys. For purposes of this activity, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material. In addition, this activity authorizes discharges of dredged or fill material associated with devices whose purpose is to measure and record scientific data, such as staff gauges, tide and current gauges, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. This activity does not authorize any permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas exploration. Fill placed for roads and other similar activities is not authorized by this activity. Temporary road crossings shall be reviewed under Section IV.B.1.e(7), Temporary Construction Access, Stream Diversion, and Dewatering. The discharge of drilling mud and cuttings may require a permit under Section 402 of the CWA (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 10 cubic yards.

(iv) This activity does not authorize seismic activities. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iv) This Category A activity does not authorize discharges and structures associated with the recovery of historic resources. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

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

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards.

(iv) Seismic activities must not produce noise levels above 160dB re 1µPa within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries for the protection of listed species.

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

(ii) This activity does not authorize drilling and the discharge of excavated material from test wells for oil and gas exploration. This activity does authorize plugging these wells.

(iii) This activity does not authorize discharges of dredged or fill material placed for roads, pads, and other similar structures and activities.

(iv) This activity does not authorize any permanent structures, except survey markers or monuments.

(v) The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain waters of the United States. The top 6 to 12 inches of the trench should be backfilled with topsoil from the trench.

(vi) Upon completion of the study, the measuring device and any other associated features supporting the device (i.e., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to the pre-construction elevations and revegetated with native species.

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(4) **Dry Fire Hydrants:** This activity authorizes discharges of dredged or fill material associated with installation and maintenance of dry hydrants. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet.

(ii) Up to 25 cubic yards of sediment may be removed from the hydrant intake.

(b) **Category B Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

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

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

(ii) The dry hydrants must be installed for the purpose of providing water for firefighting.

(iii) Sediment removed from hydrant intakes must be deposited and retained in an upland (non-wetland) area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(iv) This activity does not authorize sediment removal from wetlands or submerged aquatic vegetation beds.

(5) **Clearing Debris and Windfalls:** This activity authorizes discharges of dredged or fill material associated with removal of debris and windfalls from shorelines and banks. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(b) **Category B Impact Limits and Requirements:**

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

(ii) The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

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

(i) This activity does not authorize stationing equipment in-stream. Work should be done from the bank or road crossing using the appropriate equipment, such as an excavator arm or boom.

(ii) This activity does not authorize dredging, shoal removal, or river bank snagging.

(iii) This activity authorizes temporary access roads but does not authorize the construction of permanent access roads.

(iv) The activity must not block or impede the movements of anadromous or resident fish species. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. The width of temporary fill must be limited to the minimum necessary for temporary construction access. Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(iv) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(v) All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

(7) **Temporary Construction, Access, Stream Diversions, and Dewatering for Construction:** This activity authorizes temporary structures, work, and discharges of dredged or fill material, including stream diversion devices necessary for construction activities or repair, or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps or the USCG, or for other construction activities not subject to the Corps or USCG regulations (Sections 10 and 404; all waters of the United States). Note that certain appropriate individual activities of this MDSPGP-5 include the authorization of these temporary construction impacts.

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet of waters of the United States and/or 200 linear feet of streams, rivers, and other open waters. The entire length of any diverted stream from the start to the endpoint of the diversion is considered impacted.(See Definitions Section for “Linear Footage of Stream Impact”)

(ii) Discharges into tidal wetlands and waters associated with temporary causeways, approach fills (except for construction mats), and cofferdams are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:** The total temporary impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters. The entire length of diverted stream is considered impacted.

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

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

(ii) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

(iii) Fill must be of materials and placed in a manner that will not be eroded by expected high flows.

(iv) Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways. This activity does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use.

(v) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(vi) A restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources must be included with the application.

(vii) The width of the fill must be limited to the minimum necessary for the temporary road crossing.

(viii) Any temporary road crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions.

(ix) Any streams or wetlands impacted for temporary road crossing(s) must be returned to pre-construction conditions which include contours, elevations, stream substrate, and revegetation with native species.

(x) This activity does not authorize structures or fill left in place after construction is completed.

(8) **Outfall Structures and Associated Intake Structures:** This activity authorizes structures, work, and discharges of dredged or fill material associated with the construction or modification of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System (NPDES) program (Section 402 of the CWA). The construction of intake structures is not

authorized by this activity unless they are directly associated with an authorized outfall structure. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(b) **Category B Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

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

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

(ii) In order to minimize the effects of intakes on anadromous fish eggs and larvae, and oyster larvae, intake structures should be equipped with screening (with mesh size no larger than 2 mm) of wedge wire or another material of equal or better performance. Where feasible, intakes should be located away from spawning or nursery grounds, or to minimize the impingement on, or entrainment of, eggs or larvae. In addition, intake velocities should not exceed 0.5 ft./sec.

(9) **Residential, Commercial, and Institutional Development Activities:** This activity authorizes the discharges of dredged or fill material into nontidal waters of the United States associated with residential, commercial, and institutional development activities, including the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, sidewalks, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, trails, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include a single residence, multiple and single unit developments, and/or a residential subdivision. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, libraries, hospitals, places of worship, and municipal buildings (e.g., fire and police department buildings, judicial buildings, public works buildings, government office buildings, etc.). The construction of new golf courses (unless an integral part of a residential development), new ski areas, or oil and gas wells are not authorized by this activity. (Sections 10 and 404, limited to nontidal waters of the United States, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.).

New crossings of all waters of the United States will be reviewed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation may be required to support the preferred crossing method.

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 5,000 square feet of waters of the United States and/or 200 linear feet of nontidal streams, rivers, or other open waters.

(ii) Category A does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent

dikes, weirs, dams, water withdrawals, or water diversions. It also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. Category B or alternate Corps permit review procedures are required for construction of these ponds or stormwater management facilities.

(iii) Limit-of-disturbance for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) The utility line must make a direct or perpendicular crossing of any stream channel except for instances where the existing on site conditions would require a diagonal crossing of the waterway.

(v) Open-cut pipeline installation within adjacent jurisdictional wetlands must not parallel a stream channel for more than 100 feet along the ordinary high water mark.

(vi) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed and generally does not require any riprap protection in-stream. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(vii) This Category A activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, Chesapeake Bay, all tidal tributaries, etc.), tidal wetlands, and nontidal wetlands adjacent to tidal waters. It must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(viii) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(ix) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) of waters of the United States and/or 2,000 linear feet of nontidal streams, rivers, or other open waters.

(ii) For all submerged utility lines across navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of the Federal navigation channel shall be shown in relation to the proposed utility line.

(iii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition (1) above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waives the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with condition (1) above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

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

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

(ii) The construction of new golf courses (unless an integral part of a residential development), new ski areas, or oil and gas wells are not authorized by this activity.

(iii) Impacts shall be minimized by selection of a utility alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable. Directional drilling, jack and bore, missile, or similar methods are the preferred method of installation.

(iv) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside forested wetlands and forested tracts, or on the edges of forested tracts.

(v) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers; creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(vi) Utility lines installed below the plane of the ordinary high water mark of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams.

(vii) In wetlands, the top 6 to 12 inches of the trench must be backfilled with the top 6 to 12 inches of topsoil removed from the trench.

(viii) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(ix) Immediately after completion of construction of the utility line through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(x) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species.

(xi) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(xii) Any temporary road crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions.

(xiii) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(xiv) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to offset the adverse effects of the project. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of

dredged or fill material. Stream relocation using natural stream design is generally considered to be self-mitigating.

(xv) If not using the preferred crossing options such as use of a bridge or bottomless arch, the applicant must provide a narrative with their joint permit application that documents the measures evaluated to minimize impacts to waters of the U.S., as well as specific documentation concerning site conditions and limitations on utilizing the preferred options including cost, and engineering factors and site specific limiting factors. This documentation must also include photographs documenting site conditions.

(xvi) For any regulated activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the application and MDSPGP-5 verification will be provided to the Department of Defense Siting Clearinghouse by the Corps to evaluate potential effects on military activities.

(10) **Stormwater Management Facilities:** This activity authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; and the construction of new low impact development (LID) integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for construction activities including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. This activity does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities or LID features into tidal waters, tidal wetlands, non-tidal wetlands adjacent to tidal waters, perennial streams or Use III or IV intermittent streams. The discharge of dredged or fill material for the construction of new stormwater management facilities and LID features proposed in other intermittent and/or ephemeral streams will be considered on a case by case basis. (Section 404; nontidal waters only).

a) **Category A Impact Limits and Requirements:**

(i) The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impacts to nontidal waters of the United States, including nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize work in applicable nontidal navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, etc.). Applications proposing work in applicable navigable waters under Section 10 of the Rivers and Harbors Act must be reviewed under a Category B or alternate Corps permit review procedures, as appropriate.

b) **Category B Impact Limits and Requirements:** The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impacts to nontidal waters of the United States, including nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers, and other nontidal open waters.

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

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

(ii) The application must provide a written determination documenting that the discharge will result in minimal adverse effects.

(iii) Permanent impacts to nontidal waters of the United States, including jurisdictional nontidal wetlands must be minimized by selection of a location for the facility that avoids and minimizes wetland and waterway impacts to the maximum extent practicable.

(iv) In addition to compensatory mitigation required for direct adverse permanent impacts, indirect adverse impacts to waters of the U.S., including conversions of aquatic resource types, caused by the discharge of dredged or fill material that exceeds 5,000 square feet and/or 200 linear feet of stream require compensatory mitigation, unless a project-specific waiver is granted.

(v) This activity cannot be used in combination with other MDSPGP-5 activities.

f. **Shoreline and Stream Bank Stabilization Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. In general, nonstructural shoreline and bank stabilization practices are preferred over structural types of stabilization. Tidal shoreline stabilization activities, including living shorelines, will be reviewed based on the following order of preference: (a) nonstructural shoreline stabilization, including beach nourishment, marsh creation, root wads, and other similar measures; and (b) structural shoreline stabilization projects such as shoreline revetments, breakwaters, groins, and bulkheads. Written documentation may be required to support the preferred stabilization method

(1) **New Tidal Revetments and Tidal Shoreline Erosion Control Structures other than Revetments:** This activity authorizes discharges of dredged or fill material associated with construction of tidal shoreline erosion control structures and construction of new tidal revetments. Examples of shoreline erosion control structures include, but are not limited to, low profile sills, breakwaters, and groins. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. (Sections 10 and 404; limited to all tidal waters and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) For new tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills, breakwaters, etc.), the structure is limited to 500 linear feet in length along the shoreline, total impacts to waters of the United States must not exceed 5,000 square feet, and the structure must not extend more than 10 feet channelward of the mean high water shoreline.

(ii) New tidal groins must not extend more than 25 feet channelward of the mean high water shoreline. For new tidal groins that meet the activity specific conditions of Category A, the structure must be constructed with vents/windows or as a low-profile structure so as to minimize impacts to the littoral drift.

(iii) This Category A activity does not authorize discharges of dredged or fill material into special aquatic sites, including intertidal mudflats, wetlands, shellfish beds, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas.

(b) **Category B Impact Limits and Requirements:**

(i) For new tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills, breakwaters, etc.), total temporary and permanent impacts to tidal waters of the United States are not to exceed 1/2 acre (21,780 square feet), including no more than 2,000 linear feet in length along the shoreline, and the structures may not extend more than 25 feet channelward of the mean high water shoreline.

(ii) New tidal groins must not extend more than 50 feet channelward of the mean high water shoreline. For new tidal groins that meet the activity specific conditions of Category B, the structure must be constructed with vents/windows or as a low-profile structure so as to minimize impacts to the littoral drift.

(iii) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long revetment).

(iv) The applicant shall submit documentation of shoreline condition at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source.

(v) Clearing and/or pruning of riparian trees and shrubs within the defined project area shall be minimized to the maximum extent practicable.

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

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

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) This activity does not authorize tidal marsh creation or beach nourishment projects. Tidal marsh creation and beach nourishment projects must be reviewed under Section IV.B.1.f.(2), Tidal Marsh Creation/Beach Nourishment or alternate Corps permit review procedures, as appropriate.

(iv) This activity does not authorize the construction of new bulkheads. New bulkhead projects must be reviewed under Section IV.B.1.f.(3), New Bulkheads, or alternate Corps permit review procedures, as appropriate.

(v) All structures constructed of stone must be clean and free of toxins.

(vi) The activity must be constructed as close to the uplands and/or bank as structurally feasible.

(vii) This activity does not authorize reclaiming eroded land.

(viii) No material must be of the size or type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area.

(ix) Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(x) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(xi) Any new revetment or tidal shoreline erosion control structure must be constructed parallel to the uplands, other than groins and returns on stone sills.

(2) **Tidal Marsh Creation/Beach Nourishment:** This activity authorizes discharges of fill material and the construction of associated protection structures, including but not limited to, groins, wave screens, low profile stone sills, small geo-tubes, and coir logs, in unvegetated, (i.e. no wetland, or submerged aquatic vegetation) shallow waters along shorelines to facilitate tidal marsh creation and/or beach nourishment for the purpose of shoreline erosion control only. Structures used to protect tidal marsh creation areas (i.e., living shorelines) should follow an order of preference that utilizes a small impact footprint. Low profile stone sills are not authorized for use with beach nourishment projects. Breakwaters are not authorized by this activity. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to all tidal waters and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) Total impact is limited to 17,500 square feet to unvegetated (i.e., no wetland or submerged aquatic vegetation) waters of the United States.

(ii) The fill and containment structures must not extend more than 500 linear feet in length and/or 35 feet channelward of the mean high water shoreline.

(iv) This Category A activity does not authorize any discharge of dredged or fill materials for the purpose of constructing any type of compensatory mitigation, including mitigation banks, in-lieu fee mitigation, and permittee-responsible mitigation.

(v) If stone sills are deemed appropriate for the project site, after consideration of other alternatives, their placement at the toe of constructed marsh shall be designed to facilitate ingress/egress of estuarine fauna during regular tidal cycles. The following example sill design parameters are acceptable measures to meet this condition:

(1) Low profile sills (with top elevation set below mean high water), particularly for low to moderate erosion energy shorelines;

(2) Sill windows/vents of sufficient width (at least 10-15 feet across the bottom), placed in sufficient number along the sill length, or at sill termini (e.g., one window for every 100 feet of sill); and,

(3) Window/vent designs, including (a) staggered; (b) off-set; (c) with window bottom constructed at mean low water elevation.

(vi) Native, non-structural shorelines must be experiencing documented erosion to qualify for Category A review under the MDSPGP-5. Projects that do not meet this requirement require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) Total impact to unvegetated (i.e., no wetland or submerged aquatic vegetation) shallow waters is limited to 1/2 acre (21,780 square feet).

(ii) The fill and containment structures must not extend more than 50 feet channelward of the mean high water shoreline.

(iii) The applicant must submit documentation of shoreline condition at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source.

(iv) The following requirements are applicable to tidal marsh creation/beach restoration projects that are proposed for the purpose of providing compensatory mitigation for another project's impacts and that are potentially eligible for Category B review:

(1) Conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of subtidal waters into tidal wetlands to provide compensatory mitigation, will be reviewed with additional scrutiny under the MDSPGP-5. Compensatory mitigation to offset unavoidable, authorized impacts to tidal waters/marshes shall be based on a no-net-loss of acreage and, to the extent practicable, sufficient to replace lost aquatic resource functions. A minimum one-to-one acreage (overall acreage lost to acreage replaced) compensation ratio shall be used. Conversion of one tidal habitat to another (e.g., fill of subtidal habitat to create tidal marsh) to provide compensatory mitigation, resulting in a trade-off of functional values, should be avoided under most circumstances to ensure no net loss of acreage and functions. Under no circumstances may the same credits be used to provide mitigation for more than one permitted activity. Greater flexibility is appropriate for tidal marsh creation from subtidal waters as compensatory mitigation in waterways which have been historically affected by heavy industrial activities (e.g., with predominantly hardened shorelines, contaminated sediments, depressed benthic and nektonic communities, and limited availability of riparian fastland for conversion to tidal marsh/waters; e.g., Baltimore Harbor, Back River). Establishment of tidal marsh from fastland, enhancement of existing tidal marsh systems (e.g., re-vegetating denuded areas; control of invasive species), and planting of tidal mud-flat (at or above mean low water) with native marsh vegetation are examples of potentially acceptable compensatory mitigation methods for impacts to tidal resources. Out-of-kind compensatory mitigation may also be considered if the Corps determines, using the watershed approach, that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed.

(2) The application shall include a list of all permits for which the tidal marsh creation project is proposed for the purpose of offsetting unavoidable adverse impacts to waters of the United States. This list shall include: The Corps and MDE permit numbers, the location where the authorized impacts were located, the amount (square feet, linear feet) of the authorized impacts, the amount of each resource type(s) (e.g., tidal/nontidal/ emergent/scrub-shrub/open water, etc.) impacted, and the amount of required compensatory mitigation.

(3) The proposed compensatory mitigation project must meet all requirements of the 2008 Mitigation Rule, 33 CFR Part 332. The final tidal marsh creation/compensatory mitigation plan must address the mitigation plan elements as required by the 2008 Mitigation Rule, 33 CFR 332.4(c).

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

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

(ii) Free-standing wave screens should be designed with an appropriate spacing between slats and a minimum elevation of 12 inches off the bottom of the waterway. The spacing between slats and distance off the bottom of the waterway should be evaluated taking into consideration the wave energy of the project site.

(iii) No material may be placed in excess of the minimum needed for erosion protection.

(iv) The fill must be placed parallel to the uplands, other than groins and returns on stone sills.

(v) The fill material used must be clean substrate, no more than 10% of which shall pass through a standard number 100 sieve.

(vi) The tidal marsh establishment area must be planted within 6 months following completion of the filling operation.

(vii) The marsh establishment area must be maintained as a wetland, with areal coverage by non-nuisance species of at least 85% for 3 consecutive years. If 85% coverage by non-nuisance species is not attained, the reasons for failure must be determined, corrective measures must be taken, and the area must be replanted.

(viii) If an erosion and sediment control plan is required for clearing or grading of the existing bank, it must be obtained from the applicable erosion and sediment control agency before beginning the clearing or grading.

(ix) Clearing and/or pruning of riparian trees and shrubs within the defined project area shall be minimized to the maximum extent practicable.

(3) **New Bulkheads, including Stone Toe Protection:** This activity authorizes the construction of new bulkheads and associated backfill for the purpose of erosion protection, and includes the placement of stone toe protection. This activity also authorizes replacement of currently non-serviceable bulkheads and associated backfill. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to tidal waters and tidal wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) New bulkheads or replacement of currently non-serviceable bulkheads or associated backfill must not exceed 500 linear feet in length and shall be placed at the mean high water shoreline.

(ii) Stone toe protection placed along the base of a new bulkhead must not extend more than 10 feet channelward of the bulkhead face or the minimum necessary to provide adequate stabilization, whichever is less.

(iii) No impacts to special aquatic sites, including intertidal mudflats, vegetated marsh, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas are authorized by this activity.

(b) **Category B Impact Limits and Requirements:**

(i) This activity authorizes new bulkheads and replacement of currently non-serviceable bulkheads up to three feet channelward of the mean high water shoreline.

(ii) Total impacts to tidal waters of the United States, including tidal wetlands, may not exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of shoreline.

(iii) Stone toe protection placed along the base of a new bulkhead must not extend more than 10 feet channelward of the bulkhead face or the minimum necessary to provide adequate stabilization, whichever is less.

(iv) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long bulkhead).

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

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

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) The erosion control structure and backfill must be constructed as close to the uplands and/or bank as structurally feasible.

(iv) This activity does not authorize reclaiming eroded land.

(v) The use of stone for toe protection must be clean and free of toxins.

(vi) No material must be of the size or type or placed in any location or in any manner, so as to impair surface water flow into or out of any wetland area.

(vii) Filter cloth must be used or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(viii) Only clean, non-metallic, non-organic, non-floatable fill material obtained from an upland source may be used as backfill material.

(ix) The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this activity and will require alternate Corps permit review procedures.

(4) **Nontidal Bank Stabilization Activities:** This activity authorizes discharges of dredged or fill material associated with installation of nontidal stream bank stabilization structures for the purpose of stream bank erosion protection. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. Nontidal stream bank stabilization activities include in order of preference: (a) non-structural/bioengineering bank stabilization measures such as root wads, brush layering, live stakes; (b) structural measures such as rock cross vanes, j-hooks, vortex rock weirs, imbricated riprap, conventional riprap, revetments, vegetated cribwalls; and (c) gabions. Written documentation may be required to support the preferred stabilization method (Sections 10 and 404; limited to nontidal waters of the United States, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) The nontidal bank stabilization itself is limited to 500 feet in total length, with total impacts to nontidal waters of the United States not to exceed 10,000 square feet.

(ii) This activity does not authorize discharges into vegetated wetlands or submerged aquatic vegetation.

(b) **Category B Impact Limits and Requirements:** Limited to 2,000 feet in total length with total impacts to nontidal waters of the United States not to exceed 1/2 acre (21,780 square feet).

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

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

(ii) Discharges associated with nontidal bank stabilization projects must not exceed an average of 1 cubic yard per running foot placed along the bank below the plane of the ordinary high water mark, unless the permittee utilizes bioengineering techniques to accomplish the stream bank stabilization.

(iii) No material may be placed in excess of the minimum needed for erosion protection.

(iv) If stone is used, the material used must be clean stone or broken concrete. Broken concrete must be clean and free of rebar or other protruding reinforcement.

(v) The activity must be constructed as close to the bank as structurally feasible.

(vi) This activity does not authorize reclaiming eroded land.

(vii) No material must be of a size, or type, or placed in any location, or in any manner, so as to impair surface water flow into or out of any waters of the United States.

(viii) Filter cloth must be used, or the project must otherwise by designed and constructed to prevent soil from washing into the waterway.

(ix) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(x) This activity does not authorize stream channelization, stream piping, or stream relocation projects. These activities may be reviewed under alternative Corps permit review procedures.

(xi) Nontidal bank stabilization material must cover only the minimum necessary for bank stabilization, must have no more than minimal effect on the stream bottom, and

should not adversely modify stream hydrology and/or channel morphology. In addition, in-stream structures shall not block the passage of aquatic species.

(xii) Structural types of nontidal bank stabilization, such as revetments, conventional riprap, and gabions, must have voids/joints and they must be planted with live stakes, to provide additional bank stabilization and stream shading.

(xiii) Impacts to woody vegetation resulting from soil compaction around the root zone by heavy equipment should be minimized.

(xiv) Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

g. **Return Water from Upland Contained Disposal Areas:** This activity authorizes the discharge of return water from upland, contained dredged material disposal areas into waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This activity satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the State through the Section 401 certification procedures. The dredging activity may require a Section 404 permit (33 CFR 323.2(d)), and will require a Section 10 permit if located in navigable waters of the United States (Section 404 only; all waters of the United States).

(1) **Category A Requirements:** No application is required for Corps authorization.

(2) **Category B Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

h. **Private Landowner Oyster Gardening:** All work authorized by this activity must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes the placement of cages placed on the bottom substrate and floats placed at the water's surface or within the water column by riparian landowners for purposes of growing oysters for personal use or to assist in restoration efforts, subject to the activity-specific impact limits and requirements, and the general conditions of this general permit (Section 10; limited to tidal waters of the United States).

(1) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(2) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

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

(a) The surface area of the floats must not exceed 500 square feet of total coverage of the water column.

(b) The native eastern oyster (*Crassostrea virginica*) shall be the species used in the oyster aquaculture activity in the floats.

(c) The floats or cages must be attached to existing structures (e.g., piers, pilings, bulkheads, etc.) that are connected to the riparian owner's fastland.

(d) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with navigation by the general public.

(e) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with ingress and egress from adjacent properties and must be situated to comply with locally established property setback requirements, if any.

(f) The riparian owner shall clearly mark the floats with his or her name and address.

(g) If the applicant wishes to mark any part of the project, the applicant must prepare and provide for U.S. Coast Guard approval, a Private Aids To Navigation application CG-2554. The form can be found at this link: http://www.uscg.mil/forms/cg/CG_2554.pdf.

(h) The riparian owner shall recover all storm-damaged, accident damaged, or dislodged equipment within 48 hours after it is dislodged and shall dispose of such equipment in accordance with State and local ordinances.

(i) The riparian owner shall not cover, dredge, or otherwise alter or destroy any submerged aquatic vegetation or tidal wetlands, as a result of the deployment and/or storage of the floats and other equipment associated with the aquaculture operation.

(j) The riparian owner shall not commercially harvest, sell, or market any of the shellfish for human consumption.

(k) The riparian owner shall not use chemical therapeutics to treat shellfish held or raised under this authorization for diseases, parasites, or to enhance the physical condition of the shellfish.

(l) The riparian owner shall not possess a total number of shellfish that exceed 25,000 per site.

(m) The riparian owner shall obtain oyster seed from a Maryland vendor or obtain an approved Shellfish Import Permit from the MD DNR.

(n) The riparian owner must not collect or release oysters without having obtained beforehand a valid Collection or Stocking permit from MD DNR.

(o) This activity does not authorize artificial reefs.

(p) This activity does not authorize impoundments and semi-impoundments of waters of the United States.

(q) The riparian owner shall maintain accurate records on the amount of shellfish placed in structures or floats and record the disposition of the shellfish. Reports shall be submitted annually and include name and address of riparian owner, location of floats, amount of shellfish raised, and final use (resource enhancement, restoration, or consumption by the riparian owner or others), including the location shellfish were moved to for enhancement or restoration activities. Reports shall be submitted to the State Aquaculture Coordinator by December 31 annually.

2. **Category B Activities Requiring Application Submittal:** The following activities may be authorized under the MDSPGP-5 after Category B review by the Corps provided the proposed regulated activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-5.

a. **Activities In or Near Federally Authorized Civil Works Projects:**

(1) **Activities In or Near Federal Navigation Projects:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that extend closer than 150 feet of the horizontal limits of any Federal navigation project. There may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-5. Application must be submitted to MDE for Corps authorization.

(2) **Activities In or Near Other Federally Authorized Civil Works Projects:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are proposed in or adjacent to any proposed or existing Federally authorized civil works project other than a Federal navigation project. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-5. Application must be submitted to MDE for Corps authorization.

b. **Activities Grandfathered by MDE:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are grandfathered from MDE's permit requirements. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-5. Application must be submitted to MDE for Corps authorization.

c. **Activities Exempt from MDE's Permit Requirements or Not Regulated by MDE's Wetlands and Waterways Program:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are exempt from or not regulated under applicable State law. This includes those Category A activities that specifically state that no application is required for Corps authorization. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-5. Application must be submitted to MDE for Corps authorization.

d. **Denials and Violations:**

(1) **Denials:** This activity applies to Category A projects that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act, the Tidal Wetlands Act, or the Waterway Construction Act, or that have been denied WQC or a CZC Certification. This activity also applies to Category A projects that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA. This activity also applies to projects that have not themselves been denied one of these authorizations, but that are part of a project that has been denied. Projects that exceed the Category A individual activities' impact limits and requirements and that have been denied one of these authorizations, or that are part of a project that has been denied, will be reviewed under Category B, or alternate Corps permit review procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

(2) **Violations:** This activity applies to Category A projects that are proposed for authorization for the purpose of resolving violations of Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA, i.e., after-the-fact applications or completed or partially-completed work that is discovered in the review of a Category A application. This activity also applies to Category A projects that are not themselves violations, but that are part of a project that is a violation, or that occur on the same property as a violation. Projects that exceed the Category A individual activities' impact limits and requirements and that are violations, are part of a project that is a violation, or that occur on the same property as a violation will be reviewed under Category B, or alternate Corps permit review procedures, as appropriate. Application must be submitted to MDE for Corps authorization for any of these violation instances.

e. **Activities Requiring an EFH Consultation:** This activity applies to Category B projects that require an individual EFH consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. Application must be submitted to MDE for Corps authorization.

f. **Activities With Potential to Impact Historic Properties and/or Federally Threatened or Endangered Species**: This activity applies to Category A projects that require additional consultation under Section 106 of the National Historic Preservation Act due to potential impacts to historic properties and/or Category A projects that require additional consultation under Section 7 of the ESA due to the presence of Federally threatened or endangered species or their critical habitat. Application must be submitted to MDE for Corps authorization.

Section III.B.2. of this document describes the review procedures for Category B activities. The acreage of impact to waters of the United States includes temporary and permanent impacts, as well as direct and indirect impacts associated with the activity. In most cases, work proposed under Category B will require a 15-day notification to the following agencies: EPA, FWS, NMFS, MHT, MD DNR, MDE, and USGS, when appropriate. A 30-day review and comment period to NMFS is required for Category B projects that may adversely affect EFH. Work proposed under this Category B activity may also require a 30-day State public notice and generally either a Tidal Wetlands license or permit or a Nontidal Wetlands and Waterways permit from MDE. Application must be submitted to MDE for Corps authorization.

V. **Definitions:** Terms are referenced in the Category A and Category B activities. Several definitions are excerpted from one of the following and are so noted:

- Final Rule for Regulatory Programs of the Corps of Engineers, 33 CFR Parts 320 through 330, as published in the November 13, 1986 Federal Register, Vol. 51, No. 219. (51 FR 219)
- Final Rule for Clarification When the Placement of Pilings is a Discharge of Fill Material, as published in the August 25, 1993 Federal Register, Vol. 58, No. 163. (58 FR 163)
- Final Rule for Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material," as published in the May 10, 1999 Federal Register, Vol. 64, No. 89. (64 FR 89)
- "Final Rule for Further Revisions to the Clean Water Act Regulatory Definition of Discharge of Dredged Material," as published in the January 12, 2001 Federal Register, Vol. 66, No. 11. (66 FR 11)
- Final Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material," as published in the May 9, 2002 Federal Register, Vol. 67, No. 90. (67 FR 90)
- Final Notice of Reissuance of Nationwide Permits, as published in the February 21, 2012 Federal Register, Vol. 77, No. 34. (77 FR 34)
- Final Rule for "Compensatory Mitigation for Losses of Aquatic Resources," as published in the April 10, 2008 Federal Register, Vol. 73, No. 70. (33 CFR 332, 73 FR 70)

Anadromous Fish: Anadromous fish are born in freshwater, spend most of their lives in saltwater (ocean), and return to freshwater to spawn. Common Chesapeake Bay area species include alewife and blueback herring, American and hickory shad, American sturgeon, and striped bass.

Best Management Practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development (77 FR 34, p. 10288).

Breakwater: A structure aligned parallel to shore, designed to protect any landform or water area behind them from the direct assault of waves.

Catadromous Fish: Catadromous fish, such as American eel, are opposite from anadromous fish in that they live in freshwater and enter saltwater to spawn.

Compensatory Mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (33 C.F.R. 332.2).

Construction Mats: Construction, swamp and timber mats (herein referred to as "construction mats") are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they are installed temporarily or permanently.

Currently Serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge of Dredged Material: The term is defined, in part, as: (1) Except as provided below in section (2), the term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following: (i) The addition of dredged material to a specified discharge site located in waters of the United States; (ii) The runoff or overflow from a contained land or water disposal area; and (iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation. (2) The term discharge of dredged material does not include the following: (i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State Section 404 program; (ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chain sawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; and (iii) Incidental fallback. Incidental fallback is the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket (33 CFR 323.2(d)).

Discharge of Fill Material: The addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (33 CFR § 323.2(f)).

Discharge of Fill Material / Pilings (Section 404): Placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be

increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings which would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions. Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material (33 CFR 323.3(c)).

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an existing aquatic resource (disturbed or degraded) to heighten, intensify, or improve one or more specific aquatic resource function(s) or to change the growth stage or composition of the vegetation present. Enhancement results in a gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement is undertaken for a specified purpose(s) such as water quality improvement, flood water retention, or wildlife habitat and does not result in a gain in aquatic resource (33 CFR 332.2).

Ephemeral Stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow (77 FR 34, p.10288).

Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site (e.g., wetlands on an upland site). Establishment results in a gain in aquatic resource area and functions (73 FR 70, p. 19689).

Federally Authorized Civil Works Project: A project which has been demonstrated to be in the Federal Government's interest and authorized by the Congress that provides infrastructure such as dams and reservoirs, flood risk reduction, ecosystem restoration, hydropower or navigation.

Fill Material*:* The term “fill material” means any material placed in waters of the United States where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage (33 CFR. 323.2).

High Tide Line: A high tide line is the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide as determined by actual data, other physical characteristics, or by other suitable means to delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges (33 CFR 328.3(d)).

Historic Property: Any prehistoric or historic district site (including archeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

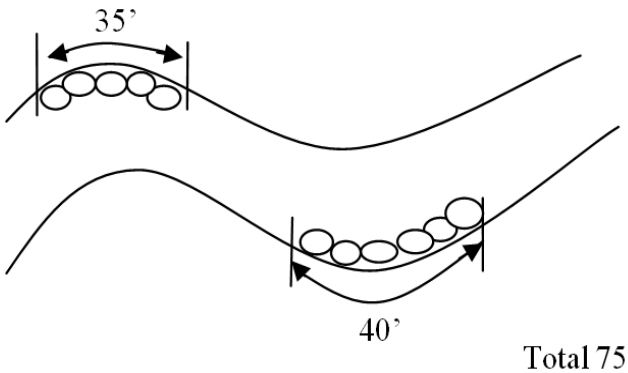
Independent Utility: A test to determine what constitutes a single and complete project for the MDSPGP-5. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility (77 FR 34, p.10289). A clear purpose and level of functionality is required for a project to have independent utility. For example, the construction of a single-family home with a driveway that connects to an existing road has independent utility and is considered a valid project. Conversely, construction of an access road with no beginning or end point in the middle of a

jurisdictional wetland does not have independent utility because it does not have a clear purpose and is dependent on future development.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow (77 FR 34, p.10289).

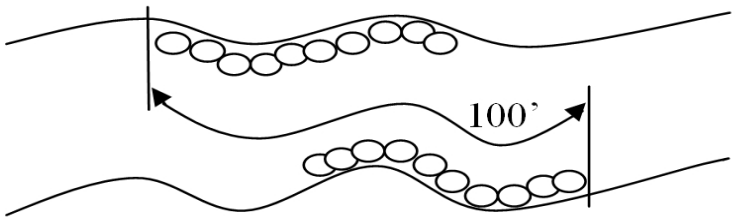
Linear Footage of Stream Impact: For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts, the linear footage of stream impact should be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

a. For regulated work on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both streams banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.



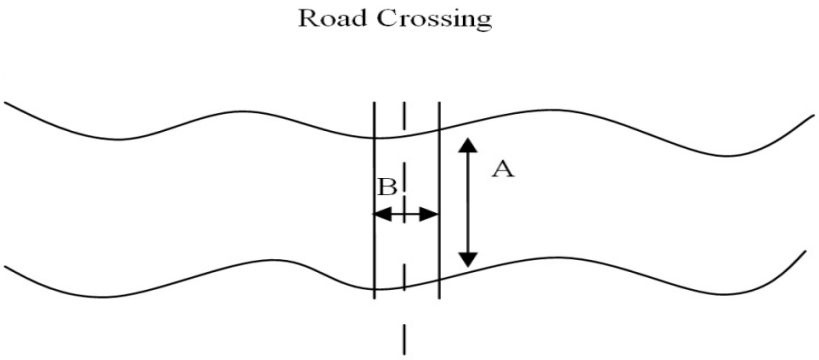
Total 75 Linear Feet

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



Total 100 Linear Feet

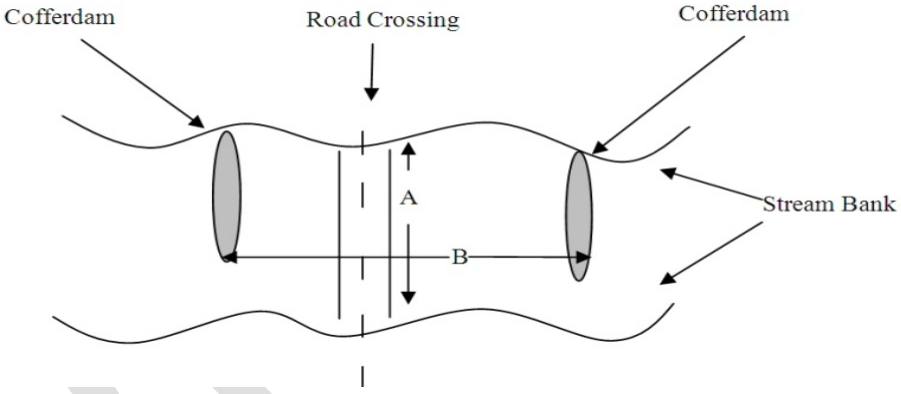
c. For transverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.



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

d. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

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



Linear Projects: Activities required for the construction, expansion, modification or improvement of projects that have multiple crossings of jurisdictional waters (e.g., highways, gas pipelines, fiber optic lines, railways, waste water pipelines, utility lines, etc). Linear projects must have independent utility to be considered a viable project with a valid purpose. Moreover, a single linear project may have multiple stream crossings as part of an overall project. The National Environmental Policy Act requires a cumulative review of all impacts associated with an overall project. Accordingly, a cumulative review will be conducted for all impacts associated with a linear project.

Loss of Waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. For purposes of the MDSPGP-5, the acreage of loss of waters of the United States is used for determining whether compensatory mitigation may be required to offset losses of aquatic functions and services and ensure that the adverse effects of the proposed activity are minimal. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations

after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States (77 FR 34, p.10289).

Low Profile Sill: A low profile offshore structure whose crest is at or slightly above the elevation of mean high water, designed to retain sand and marsh on its landward side.

Mean High Water: In coastal areas, the line on the shore reached by the plane of the mean (average) high water. For precise determination, it must be established by survey with reference to the available tidal datum, preferably over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used for estimate purposes (51 FR 219, p. 41253).

Natural Stream Design: The channel should mimic the dimensions, pattern, and profile of a representative reference stream reach.

Navigable Waters of the United States: Those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity (51 FR 219, p. 41251).

Nontidal Wetland: A nontidal wetland is a wetland (i.e., a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., the spring high tide line) (72 FR 47, p. 11196).

Open Water: An area that, during a year with normal patterns of precipitation, has water flowing or standing above for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds (77 FR 34, p. 10289).

Ordinary High Water Mark: The line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas (51 FR 219, p. 41251).

Overall Project: The overall project for purposes of MDSPGP-5 is defined as the total project proposed or accomplished by one owner/developer, partnership, or other association of owners/developer and includes all regulated activities that are reasonably related and consistent with the project purpose. An overall project must have independent utility. Linear projects may be composed of more than one "single and complete project" and require a defined beginning and end point to be considered a valid project with independent utility (see definitions of Single and Complete Project and Linear Project).

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow (77 FR 34, p. 10289).

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes (77 FR 34, p. 10289).

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions (33 CFR 332.2).

Re-establishment: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions (33 CFR 332.2).

Rehabilitation: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of repairing natural/historic functions to a former or degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area (33 CFR 332.2).

Restoration: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation (33 CFR 332.2).

Single and Complete Project: For purposes of the MDSPGP-5, the term "single and complete" project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). To ensure consistency with the requirements of the CWA 404(b)(1) Guidelines and the National Environmental Policy Act, clear purpose and function is required for all projects. The overall project, for purposes of the MDSPGP-5, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. The cumulative impacts to waters of the United States for all activities must be known in order to assess the cumulative impacts of the project and determining the Category of activity (e.g., for many activities greater than 200 linear feet of stream impact is a Category B activity) and eligibility under the MDSPGP-5. For example, a linear project consisting of three stream crossings that total less than a combined 10,000 square feet of impacts to waters of the United States and/or 200 linear feet of stream will potentially qualify for a Category A activity under the MDSPGP-5. Conversely, the project will be considered a Category B activity if the combined jurisdictional impacts for all three crossings are greater than 10,000 square feet of waters of the United States and/or 200 linear feet of stream. One verification under the MDSPGP-5 would be issued for all three crossings. Refer to Section VII.A.6. for additional information on single and complete projects under MDSPGP-5.

Special Aquatic Sites: Wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries, and refuges under the 404(b)(1) Guidelines, as defined at 40 CFR 230.40 through 230.45.

Stream Channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States (77 FR 34, p. 10290).

Tidal Wetland: A tidal wetland is a wetland (i.e., a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides (77 FR 34, p. 10290).

Waters of the United States: The term waters of the United States means (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) All interstate waters including interstate wetlands; (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) Which are or could be used by interstate or foreign travelers for recreation or other purposes; or (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) Which are used or could be used for industrial purpose by industries in interstate commerce; (4) All impoundments of waters otherwise defined as waters of the United States under the definition; (5) Tributaries of waters identified in paragraphs (1)-(4) of this section; (6) The territorial seas; (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1)-(6) of

this section; (8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. Projects proposing a "change in use" to agricultural areas having a National Resource Conservation Service approved prior converted cropland designation that would remove this site from agricultural use or the project is a non-agricultural activity must have a jurisdictional determination in accordance with the 1987 Federal manual and subsequent amendments. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States (51 FR 219, p. 41250).

VI. **Alternate Corps Permit Review:** Activities that require DA authorization, but that do not meet the terms and/or conditions of the MDSPGP-5 are ineligible for authorization/verification under the MDSPGP-5 and will be reviewed under alternate Corps permit procedures. However, during the alternate Corps permit review, the Corps may determine that the proposed adverse environmental effects have been reduced to minimal and the proposed project meets the terms and conditions of the MDSPGP-5. At that time, the Corps may verify MDSPGP-5 eligibility for the project.

If a project is ineligible under the terms and conditions of the MDSPGP-5, the Corps will notify MDE and the applicant that the project will require further evaluation under alternate Corps permit procedures, including a public interest review. All information submitted by the applicant for MDSPGP-5 review will also be used by the Corps for the alternate Corps permit review. Individual WQC and CZC determination may be required for projects alternatively reviewed. Water Quality Certification and CZC may be included as part of MDE's tidal wetlands or nontidal wetlands and waterways authorizations.

VII. **General Conditions:** To qualify for MDSPGP-5 authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any activity-specific impact limits and requirements identified in the Description of MDSPGP-5 Authorized Activities, and any case-specific special conditions imposed by the Corps.

A. **General Requirements:**

1. **Other Permits:** Authorization under the MDSPGP-5 does not obviate the need to obtain other Federal, State, or local authorizations required by law or to comply with all Federal, state or local laws.

2. **Geographic Jurisdiction:** This MDSPGP-5 will authorize work undertaken within the geographic limits of the State of Maryland under the regulatory jurisdiction of the Baltimore District.

3. **Applicability:** Applicability of the MDSPGP-5 shall be reviewed with reference to the Corps definition of waters of the United States, including wetlands, and navigable waters of the United States. Applicants are responsible for delineating boundaries of all waters of the United States, including wetland boundaries. The identification and delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and applicable supplemental guidance issued by the Corps of Engineers.

4. **Minimal Effects:** Projects authorized by the MDSPGP-5 shall have no more than minimal individual and cumulative adverse environmental effects, as determined by the Baltimore District.

5. **Discretionary Authority:** Notwithstanding compliance with the terms and conditions of the MDSPGP-5, the Corps retains discretionary authority to require an alternate Corps permit review for any project under any categories of the MDSPGP-5 based on concerns for the aquatic environment or for any other public interest factor. This authority may be invoked on a case-by-case basis during the review process for Category B activities whenever the Corps determines that, based on the concerns stated above, the potential consequences of the proposed project warrant individual review. In some rare instances, the Corps may have concerns for the aquatic environment or for any other public interest factor pertaining to a specific proposed project, which has already

received a case-specific verification as a Category A activity. In order to evaluate this project under an alternate Corps permit review, the verification must be suspended in accordance with Section VIII.E of the MDSPGP-5.

Whenever the Corps notifies an applicant that an alternate Corps permit may be required, authorization under the MDSPGP-5 is voided. No work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under the MDSPGP-5.

6. **Single and Complete Projects:** The MDSPGP-5 shall not be used for piecemeal work and shall be applied to single and complete projects, including maintenance activities. For purposes of this MDSPGP-5, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project. The MDSPGP-5 shall not be used for any activity or portion of a project (e.g., a pier or boat ramp), that is part of, or dependent on, an overall project (e.g., the dredging of a main navigation channel or a spur channel), for which an individual permit or some other alternate Corps permit is required. The same activity under the MDSPGP-5 cannot be used more than once for the same single and complete project.

7. **Use of Multiple MDSPGP-5 Activities:** More than one MDSPGP-5 activity may be used to authorize a single and complete project. However, the specific requirements, including all activity-specific requirements and impact thresholds, must be met for each MDSPGP-5 activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the MDSPGP-5 activity with the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category A of Section IV.B.1.(d)(1) with an associated nontidal bank stabilization authorized under Section IV.B.1.f.(4)(a), the maximum total impact limits to nontidal waters of the United States for the single and complete project may not exceed 10,000 square feet in total area and/or 500 linear feet in total length. The road crossing and nontidal bank stabilization activities must still meet all Category A activity-specific requirements and impact thresholds.

A single and complete project with multiple impacts, that may be eligible for authorization under a Category A and a Category B activity, requires an application submittal to the Corps and review under the MDSPGP-5 Category B verification procedures. All specific requirements, including the activity-specific requirements and impact thresholds of the Category A activity and the Category B activity must be met and the total extent of project impacts must not exceed to total acreage and/or linear foot limit of the MDSPGP-5 activity with the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category A of Section IV.B.1.(d)(1) with an associated nontidal bank stabilization authorized under Section IV.B.f.(4)(b), the maximum total impact limits to waters of the United States for the single and complete project may not exceed 1/2 acre (21,780 square feet) in total area and/or 2,000 linear feet in total length. The road crossing activity must meet the Category A activity-specific requirements and impact thresholds, and the nontidal bank stabilization activity must meet the Category B activity-specific requirements and impact thresholds.

8. **Permit On-Site:** The permittee shall ensure that a copy of the MDSPGP-5 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

9. **Authorized Activities in Navigable Waters Subject to Section 10 of the Rivers and Harbors Act of 1899:**

a. If future operations by the United States require removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable water, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

b. The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for such damage.

c. The permittee must install and maintain, at his/her expense any safety lights, markers, and/or signals prescribed by the USCG, through regulations or otherwise, on the authorized facilities and/or structures. The permittee must contact the Commander (AOWW), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704, to ascertain the need for obstruction lights. Prior to commencing the construction or installation of an authorized structure in navigable waters of the United States, the permittee must submit a "Private Aids to Navigation Application" to the Commander of the USCG.

d. The permittee must provide location coordinates of the authorized structures, including minimum depth and other pertinent information to the USCG and request that a Local Notice to Mariners is issued regarding the authorized work.

10. For Aerial Transmission Lines Across Navigable Waters: The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the USCG for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety 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. Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

b. Corps Regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both the National Electrical Safety Code requirements and ER 1110-2-4401 apply, the greater minimum clearance is required.

B. **National Concern:**

1. **Historic Properties:** Any activity authorized by the MDSPGP-5 shall comply with Section 106 of the National Historic Preservation Act. Maryland Department of the Environment, in cooperation with the Maryland Historic Trust, shall conduct an initial review and notify the Corps if any archaeological or other cultural resources are in the vicinity of the project. The Corps may require applicants to perform a survey of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required. The applicant must notify the Corps if they have knowledge that the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places. Upon discovery of any previously unknown historic, cultural, or archeological resources or remains while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps of what has been found, and avoid construction activities that may affect the resources or remains until the required coordination has been completed. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. The permittee shall not begin or continue work until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed. Information on the location and existence of historical resources can be obtained from the MHT, Office of Preservation Services, and the National Register of Historic Places. The Corps will conclude all tribal coordination in accordance with the District's tribal coordination procedures prior to verifying an activity authorized by MDSPGP-5.

2. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights.

3. **National Lands:** Activities authorized by the MDSPGP-5 shall not impinge upon the value of any Federal land, including but not limited to, National Wildlife Refuges, National Forests, National Parks, National Marine Sanctuaries, or any area administered by the FWS, U.S. Forest Service, or National Park Service (e.g., Assateague Island National Seashore).

4. **Endangered Species:** The MDSPGP-5 does not authorize any activity that may directly or indirectly affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA; or which may directly or indirectly destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and procedures. MDE, in cooperation with MD DNR, shall conduct an initial review and notify the Corps and FWS or NMFS if any Federally listed species or critical habitat is likely to be in the vicinity of the project. The Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Information on the location of threatened and endangered species and their critical habitat can be obtained from the offices of the FWS and NMFS or their web pages at: http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html and http://www.noaa.gov/fisheries.html respectively.

National Marine Fisheries Service – Endangered Species Act Requirements:

a. **Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species:** Any interaction between a sea turtle or any species listed now or in the future under Federal law as a threatened or endangered species ("listed species") (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the vessels associated with the project must be reported to the NMFS as follows: If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the NMFS Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery. If the animal requires assistance, the call to the hotline must be made immediately. 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 the Corps of all correspondence and interaction with the NMFS within two calendar days. Additional information about any Federally threatened or endangered species may be obtained from the

attached fact sheet or online at: http://www.nero.noaa.gov/prot_res/stranding/SpeciesOverview.html and at: http://www.nero.noaa.gov/prot_res/esp/. 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.

b. **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. Vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the NMFS.

c**. Best Management Practices Applicable to Category A Activities Within Tidal Waters Having Salinity Levels Less Than 6 Parts Per Thousand (ppt) (See Appendix B):**

(i) Pile Driving: For the protection of listed species within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt, pile driving methods must maintain noise level thresholds not to exceed 187dB SEL re 1µPa or 206dB peak re 1µPa at a distance of >10m from the pile being installed; and for levels >155dB peak re 1µPa must not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise levels below 155dB peak re 1µPa) must be provided between work days. Pile driving construction must adhere to one of the following methods: (a) piles must be installed in-the-dry during low water; or (b) piles must be drilled and pinned to ledge; or (c) vibratory hammers must be used to install any size and quantity of wood, concrete, or steel pilings; or (d) impact hammers must be limited to one hammer and <50 piles installed per day with the following: wood piles of any size; concrete piles <18-inches diameter; steel piles <12-inch diameter if the hammer is <3,000 pounds and a wood cushion is used between the hammer and steel pile; or (e) approved pile driving methods that will allow noise level thresholds to be met.

(ii) Sediment Disturbing Activities Time-of-Year Restriction: Sediment disturbing activities, which includes pile driving activities, are prohibited during the period April 1 through June 30 within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt for the protection of shortnose sturgeon during early life stages in these waters.

5. **Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act:** Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires an EFH consultation with the NMFS for any action or proposed action authorized, funded, or undertaken by a Federal agency that may adversely affect EFH. Essential Fish Habitat has been defined by Congress as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The designation and conservation of EFH seeks to minimize adverse effects on habitat caused by fishing and non-fishing activities. NMFS has determined that many of the MDSPGP-5 Category A activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. National Marine Fisheries Service, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category A of the MDSPGP-5 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category B review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-5 process, an alternate Corps permit review process is required for the project.

6. **Wild and Scenic Rivers:** No activity is authorized under the MDSPGP-5 that occurs in a component of the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such rivers are in an official study status, unless the appropriate Federal agency, with direct management responsibility for the river, has determined in writing that the proposed activity will not adversely affect any National Wild and Scenic River, including study rivers. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U. S. Forest Service, Bureau of Land Management, or FWS).

7. **Federally Authorized Civil Works Projects:**

a. **Federal Navigation Projects:** The MDSPGP-5 does not authorize interference with any existing or proposed Federal navigation projects. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (See VII.A.9.a.)

b. **Federal Navigation Channel Setbacks:** All activities must comply with the Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels. Please see the Baltimore District's Regulatory webpage to view this guidance: http://www.nab.usace.army.mil/Missions/CivilWorks/NavMaps.aspx

c. **Other Federally Authorized Civil Work Projects (e.g., flood control, dams, and reservoirs):** The MDSPGP-5 does not authorize interference with any proposed or existing Federally authorized civil works project.

8. **Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes;

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;

d. Design or construction deficiencies associated with the permitted work; and

e. Damage claims associated with any future modification, suspension or revocation of the MDSPGP-5 or any specific MDSPGP-5 verification.

9. **Navigation:** Projects authorized under the MDSPGP-5 shall not cause interference with navigation, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to projects authorized under the MDSPGP-5. Nothing in the MDSPGP-5 shall in any way restrict the District Engineer, U.S. Army Engineer District, Baltimore, from exercising his legal authority to protect the public interest in navigation or from exercising his authority under the Navigation Servitude of the United States. (See VII.A.9.)

10. **Fills Within 100-Year Floodplain:** The activity must comply with applicable Federal Emergency Management Agency approved State or local floodplain management requirements.

11. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require non-Federal applicants to demonstrate that the structures comply with established State dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

12. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for obtaining any "take" permits required under the FWS's regulations governing compliance with the Migratory Bird Treaty Act or the

Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the FWS to determine if such "take" permits are required for a particular activity.

13. **Environmental Justice:** Activities authorized under this MDPSGP-5 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

14. **Hazardous Wildlife Attractants On or Near Airports:** Permittees must consider the activity's effects on aviation safety and design a project so it does not create a wildlife hazard. All authorized activities that may attract hazardous wildlife shall be consistent with the siting criteria and land use practice recommendations stated in Section 1-3 of the Federal Aviation Administration Advisory Circular 150/5200-33. This document can be found at: http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf

15. **Water Quality Certification:** Water Quality Certification is required in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment. The Corps is coordinating with the Maryland Department of the Environment and has requested their determination whether to issue, deny, or waive Water Quality Certification for this regional general permit. The Section 401 certifying agency has to make its decision within the statutory limit of one year from the date of the public notice that advises the public of the draft general permit.

16. **Coastal Zone Management Consistency (CZM):** The Corps is requesting that the Maryland Department of the Environment determine whether to issue, deny, or waive Coastal Zone Management (CZM) Consistency for this regional general permit. The Maryland CZM Program has a statutory limit of 6 months to make its consistency determination.

C. **Minimization of Environmental Impacts:**

1. **Avoidance and Minimization:** Discharges of dredged or fill material into waters of the United States and adverse impacts of such discharges on the aquatic ecosystem, both temporary and permanent, must be avoided and minimized to the maximum extent practicable at the project site (i.e., on-site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

2. **Mitigation Standards:** The Corps will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the adverse effects on the aquatic environment are minimal and that the project is eligible for authorization under the MDSPGP-5:

a. Wetlands: Compensatory wetland mitigation at a minimum one-for-one ratio will be required for all permanent tidal or nontidal wetland losses that exceed 5,000 square feet and that require an application submittal for Corps authorization, unless the Corps determines in writing that either some type of mitigation or ratio of mitigation other than a one-to-one ratio would be more appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 5,000 square feet or less that require an application submittal for Corps authorization, the Corps may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested and scrub-shrub wetlands; 1:1 for herbaceous emergent wetlands, and 1:1 for permanent conversion of forested wetlands to herbaceous emergent wetlands. Maintenance of previously authorized activities typically does not require mitigation. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

b. Streams and Other Open Waters: Compensatory mitigation at a minimum one-for-one ratio will be required for permanent losses of streams or other open waters that exceed 200 linear feet and that require an application submittal for Corps authorization, unless the Corps determines in writing that either some other type of mitigation would be more appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. Compensatory mitigation, such as stream rehabilitation, enhancement

(including enhancement of riparian buffers), or preservation, focusing on functional replacement, may be required to ensure that the activity results in minimal adverse effects on the aquatic environment. . In addition, compensatory mitigation plans for losses of streams and other open waters will normally include a requirement for the restoration or establishment, maintenance, and site protection of riparian areas next to open waters. Riparian buffer areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns. Typically, the riparian area will not be less than 25 feet wide on each side of the stream, but the Corps may require wider riparian areas to address documented water quality or habitat loss concerns. Furthermore, the Corps may determine that restoration or establishment of a riparian area along a single bank or shoreline is sufficient when it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters.

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

d. The applicant is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment. Applicants may propose the use of mitigation banks, in-lieu-fee programs, or separate permittee-responsible mitigation.

e. When permittee-responsible mitigation is the proposed compensatory mitigation option, the applicant is responsible for submitting a compensatory mitigation plan. A conceptual or detailed mitigation plan may be used by the Corps to make the decision on the MDSPGP-5 verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the Corps prior to the commencement of work in waters of the United States. The special conditions of the MDSPGP-5 verification must clearly indicate the party or parties responsible for the implementation, performance, and, if required, the long-term management of the permittee-responsible compensatory mitigation project.

f. When mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number and resource type of credits to be provided. The special conditions of the MDSPGP-5 verification must either identify the specific mitigation bank or in-lieu fee program, or state that the specific mitigation bank or in-lieu fee program used to provide the required compensatory mitigation must be approved by the Corps before the credits are secured and prior to the commencement of the work in waters of the United States.

g. For losses of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee.

h. Compensatory mitigation will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-5. For example, if an activity has an acreage limit of ½ acre, it cannot be used to authorize any project resulting in temporary and permanent impacts greater than ½ acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the impacted waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the terms and conditions, including the acreage limits, also satisfies the minimal impact requirement associated with the MDSPGP-5.

3. **Work in Wetlands:** Heavy equipment working in wetlands shall be avoided if possible and, if required, soil and vegetation disturbance shall be minimized by using techniques such as timber mats, geotextile fabric, and vehicles with low-pressure tires. Disturbed areas in wetlands shall be restored to preconstruction contours and elevations upon completion of the work.

4. **Temporary Fill and Mat**s: Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP-5. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-5 shall be properly stabilized

during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade. Upon completion of the work, all temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original, pre-construction contours and revegetated with native wetland species.

5**. Erosion and Sediment Control:** Adequate erosion and sediment control measures, practices, and devices, such as turbidity curtains in tidal waters, vegetated filter strips, geotextile silt fences, phased construction, or other devices or methods, shall be used to reduce erosion and retain sediment on-site during and after construction. These devices and methods shall be capable of (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has been successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted "in the dry" whenever practicable. This should be accomplished using stream diversion devices, other than earthen or stone cofferdams. In addition, work in waters of the United States should be performed during periods of low-flow or no-flow, whenever practicable.

6. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through, or spawn/nursery within the area (e.g., anadromous/catadromous fish); unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. A low flow channel must be maintained through any discharges placed for armoring across the channel so as to not impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage

7. **Water Crossings:**

a. All temporary and permanent crossings of waterbodies shall be suitably bridged, culverted, or otherwise constructed to withstand and to prevent the restriction of high flows and tidal flows; to maintain existing low flows; and to prevent the obstruction of movement by aquatic life indigenous to the water body, including anadromous, estuarine, and resident fish species.

b. All water crossings (e.g., utility lines and road crossings) must be constructed roughly perpendicular to waters of the United States, including streams and adjacent wetlands. Where a utility line or access road is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line/access road and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance.

c. Water crossings must be constructed "in the dry" whenever practicable. This should be accomplished by using stream diversion devices other than earthen or stone cofferdams.

d. Equipment shall cross streams only at suitably constructed permanent or temporary crossings.

e. Temporary structures and fills shall be removed and the area restored to its original contours and elevations, or to the conditions specified in the approved plans. The temporary structures and the areas of fill associated with these structures must be included in the total waterway/wetlands impacts.

8. **Discharge of Pollutants:** All activities that are authorized under the MDSPGP-5 and that involve any discharge or relocation of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. 1251 et. Seq.), and applicable State and local laws and regulations. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

9. **Spawning Areas:** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill materials in fish and shellfish spawning or nursery areas during spawning seasons, shall be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year. Activities that result in the physical destruction (e.g., through excavation, dredging, mining, fill, or significant downstream sedimentation by substantial turbidity) of an important spawning/nursery area (as determined by National Marine Fisheries Service and/or FWS) are not authorized by this MDSPGP-5.

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

11. **Environmental Values:** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-5 in a manner that maintains as many environmental values as practicable, and that avoids or minimizes any adverse impacts on existing fish, wildlife, and natural environmental values.

12. **Management of Water Flows:** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

13. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.

D. **Procedural Conditions:**

1. **Inspections:** The permittee shall permit the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of the MDSPGP-5. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work, and post-dredging survey drawings for any dredging work.

2. **Compliance Certification:** Every permittee who receives a written MDSPGP-5 verification shall submit a signed Compliance Certification Form within 60 days following completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals). Failure to submit the Compliance Certification Form by the permittee could result in the Corps taking appropriate non-compliance enforcement action against the permit holder. The Corps will provide a blank copy of the Compliance Certification Form to the permittee with the MDSPGP-5 verification. The completed form will include the following:

a. A statement that the authorized work either was or was not done in accordance with the MDSPGP-5 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-5 verification, including any general and/or specific conditions and requirements, the permittee shall describe the specifics of the deviation from the authorized activity.

b. A statement that any required mitigation was or was not completed in accordance with the permit conditions. If the mitigation was not completed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions.

c. The signature of the permittee, certifying the completion of the work and compensatory mitigation.

After the project is completed, the certification shall be sent to the Baltimore District at the following address:

U. S. Army Corps of Engineers
Baltimore District
Attn: CENAB-OP-R
P. O. Box 1715
Baltimore, Maryland 21203-1715

3. **Transfer of MDSPGP-5 Verifications:** If the permittee sells the property associated with a MDSPGP-5 verification, the permittee may transfer the MDSPGP-5 verification to the new owner by submitting a letter to the Baltimore District Corps of Engineers office to validate the transfer. A copy of the MDSPGP-5 verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this MDSPGP-5 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-5, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-5 permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ _____
(Transferee) (Date)

4**. Maintenance:** The permittee shall properly maintain the work or structure authorized by the MDSPGP-5 in good condition and in compliance with the terms and conditions of the MDSPGP-5, including maintenance to ensure public safety.

5. **Property Rights:** The MDSPGP-5 does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

6. **Modification, Suspension and Revocation:** The MDSPGP-5, or any verification under it, may be either modified, suspended, or revoked, in whole or in part, pursuant to DA policies and procedures and any such action shall not be the basis for any claim for damages against the United States. The Corps will issue a public notice announcing any changes to the MDSPGP-5 when they occur; however, it is incumbent upon the permittee to remain informed of any changes to the MDSPGP-5

7. **Restoration:** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-5, may be required to restore the wetland or waterway to its former condition, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.

8. **Special Conditions:** The Corps may impose special conditions on any project authorized under the MDSPGP-5, in cases where the Corps determines that special conditions are necessary to avoid or minimize adverse effects on the environment or on any other factor of the public interest. Failure to comply with all conditions of the authorization/ verification, including special conditions, will constitute a permit violation/unauthorized work and may subject the permittee to criminal, civil, or administrative penalties, and/or restoration.

9. **False or Incomplete Information:** In granting authorization pursuant to this permit, the Baltimore District will rely upon information and data provided by the permittee. If the Corps or MDE verifies the project under the MDSPGP-5 and subsequently discovers that it has relied on false, incomplete, or inaccurate information

provided by the permittee, the MDSPGP-5 verification may be revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.

10. **Compliance:** Any activity performed in waters of the United States, including wetlands and navigable waters, that is not in compliance with all the terms and conditions of the MDSPGP-5, which includes the MDSPGP-5 authorized activity activity-specific requirements, constitutes unauthorized work and is subject to an enforcement action by the Corps or the EPA. Furthermore, the MDSPGP-5 does not delegate any Section 404 enforcement or regulatory authority. Unauthorized work in waters of the United States, including wetlands and navigable waters, is subject to one or more of the following responses by EPA and/or the Corps:

a. A Cease and Desist order and/or an administrative compliance order requiring remedial action.

b. Initiation and assessment of a Class I administrative penalty order pursuant to Section 309(g) of the CWA.

c. Initiation and assessment of a Class II administrative penalty for continuing violation pursuant to Section 309(g) of the CWA.

d. Referral of the case to the U. S. Attorney with a recommendation for a civil or criminal action.

e. If the Corps determines that an after-the-fact application is appropriate, it will be reviewed following the appropriate procedures.

f. Any other appropriate response.

VIII. **Duration of Authorization:**

A. **Duration of Authorization:**

1. **Duration of MDSPGP-5 Authorization and Expiration Date:** Unless further modified, suspended, or revoked, this general permit will be in effect until five years from the effective date listed at the top of page 2. Upon expiration, it may be considered for renewal. Except as provided in Item 2 below, work authorized under this MDSPGP-5 must be completed before the MDSPGP-5 expires, is suspended, or revoked, whichever date occurs sooner. The Baltimore District will issue a public notice announcing any changes to the MDSPGP when they occur; however, it is incumbent upon permittees to remain informed of any changes to this MDSPGP-5. If this MDSPGP-5 is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. The Corps may re-evaluate the terms and conditions of this MDSPGPG-5 at any time it deems necessary to protect the public interest.

2. **Grandfather Provision for Expiring MDSPGP-5:** Activities authorized under this MDSPGP-5 that have commenced or are under contract to commence the work in reliance upon this authorization, will have twelve months from the date of this MDSPGP-5's expiration, modification, or revocation to complete the activity under the terms and conditions of this MDSPGP-5. The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date.

B. **Previously Authorized Activities:**

1. Activities that were completed based on a previous written authorization from the Corps for applications made prior to the effective date of the MDSPGP-5, shall remain authorized, as specified in their original project-specific verification, and need no further reverification.

2. All activities that have received written project-specific verification under the MDSPGP-4, based on applications made prior to the effective date of the MDSPGP-5, but that have not been completed,

have 12 months from the expiration date of the MDSPGP-4 to complete the work under the terms and conditions of the MDSPGP-4. If the work cannot be completed within 12 months from the expiration date of the MDSPGP-4, the project must receive written reauthorization under the MDSPGP-5 or alternate Corps permit review procedures. If the project is grandfathered by MDE, the request for reauthorization will be forwarded to the Corps for review and Corps approval. Requests for modifications of previously authorized work under the MDSPGP-4 and/or special conditions are not grandfathered, and must be submitted in writing for written reauthorization under the MDSPGP-5 or alternate Corps permit review procedures.

3. Activities authorized pursuant to 33 CFR part 330.3 (activities occurring before certain dates) are not affected by the MDSPGP-5.

C. **Changes to State Statutes, Regulations, or General Permits:** The Corps will review proposed changes to the State program statutes and regulations, including development of State general permits, to determine whether, and to what extent, the proposed changes will affect the MDSPGP-5. The Corps will determine whether or not to continue use of the MDSPGP-5 under the modified State statutes, regulations, or general permits based on the considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of the MDSPGP-5, in accordance with DA Regulations.

D. **Reporting and Evaluation:**

1. Maryland Department of the Environment will provide annual data and statistics to the Baltimore District Engineer describing its implementation of the MDSPGP-5. These reports shall include information on the types and numbers of activities authorized under the MDSPGP-5, including specific types and numbers of activities authorized under Categories A and B; the impacts authorized; evaluation times; mitigation required and completed; the results of compliance, monitoring, and enforcement activities; and other data, as required. These reports will be available to the public.

2. The Corps, in consultation with MDE and the resource agencies, shall review operational issues related to successful implementation of the MDSPGP-5 and shall coordinate and provide modifications to the operational procedures, the Standard Operating Procedures document, and/or the MDSPGP-5, as appropriate.

3. Prior to the expiration of the MDSPGP-5, the Corps, with recommendations from the resource agencies will evaluate the MDSPGP-5, including its terms and conditions, and will determine if: (1) the MDSPGP-5 has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified. Based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the MDSPGP-5 is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

E. **Modification, Suspension, or Revocation:**

The Corps District may suspend, modify, or revoke MDSPGP-5 authorization for any specific geographic area, class of activities, class of waters, or any case-specific verification under the MDSPGP-5, within the State of Maryland, by issuing a public notice or notifying the MDE and the permittee involved. The MDSPGP-5 will expire on September 30, 2021.

By Authority of the Secretary of Army:

Edward P. Chamberlayne, P.E.
Colonel, U.S. Army
Commander and District Engineer