

**DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT  
STATE OF MARYLAND**

**MDSPGP-3  
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DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT  
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The Baltimore District of the U.S. Army Corps of Engineers (Corps) hereby issues the Maryland State Programmatic General Permit-3 (MDSPGP-3) 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 listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's regulatory geographic boundaries. Activities with minimal adverse environmental effects, as specified by the terms and conditions of this MDSPGP-3, 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, and may determine them to be eligible for authorization under the MDSPGP-3. This MDSPGP-3 does not affect the Corps Individual Permit review process or activities exempt from the Corps permit process.

This MDSPGP-3 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-3 builds upon the existing Wetland and Waterway regulatory 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-3. Discharges or structures that do not meet the terms and conditions of Category I will be reviewed by the Corps to determine their eligibility for authorization under the MDSPGP-3.
5. 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 Environmental Protection Agency (EPA) to outline the means for achieving these goals. The procedures established by these MOAs are maintained, where applicable, in this permit.

6. Section 404(c) of the CWA authorizes the Administrator of 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.

**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/or permanent, which individually and/or cumulatively result in direct or indirect impacts not to exceed 1.0 acre of waters of the United States, including jurisdictional wetlands and navigable waters, for specific categories of activities as regulated by Section 404 of the CWA or Section 10 of the River and Harbors Act of 1899. Discharges of dredged or fill material or the placement of structures, as described in Category I of the MDSPGP-3 Category List, that comply with the terms and conditions contained in the MDSPGP-3 and have only minimal individual and cumulative adverse effects on the environment are authorized by the Corps. Discharges of dredged or fill material or the placement of structures, as described in Categories II and III of the MDSPGP-3 Category List, will be reviewed and verified by the Corps and appropriate resource agencies to determine whether such activities may be authorized under this MDSPGP-3. Authorization under the MDSPGP-3 requires compliance with all of the terms and conditions of the MDSPGP-3 and that the activities authorized have only minimal individual and cumulative adverse effects on the environment.

The term “impacts to waters of the United States” as used herein for the purpose of determining MDSPGP-3 eligibility means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the 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. 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 line.

B. **Activities Authorized by the MDSPGP-3:** This MDSPGP-3 authorizes all activities listed in Category I of the MDSPGP-3 and those activities in Categories II and III that comply with all terms and conditions of the MDSPGP-3, including the activity-specific conditions, and have no more than minimal individual and/or cumulative adverse environmental effects. As a condition of its use, the MDSPGP-3 requires verification in certain instances specified in the MDSPGP-3. Receipt of such verification does not eliminate the requirement that, to be authorized under the MDSPGP-3, the activity must comply with all its terms and conditions. Several of the Category I activities require an application submittal to MDE for verification of Corps authorization prior to commencement of the proposed work. All Category II activities must be reviewed by the Corps to ensure compliance with Corps interests or concerns, including Federal projects and navigation issues, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act prior to making a determination of eligibility for authorization under the MDSPGP-3. For activities in Category III, the Corps will consult 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-3. The MDSPGP-3 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-3:**

1. Activities 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-3, which includes the terms and activity-specific conditions of the MDSPGP-3 Category List.
3. Activities that are components of a single and complete project, 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 navigable waters. The acreage of impact to all waters of the U.S. includes the filled area, both temporary and permanent, plus those waters of the U.S. 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 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 or a Coastal Zone Consistency determination. Activities that have been previously denied Department of the Army 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-3 without prior review and approval under the appropriate category of the MDSPGP-3, 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-3 without prior approval by the Corps.
6. Activities that were initiated prior to the issuance of the MDSPGP-3 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-3 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-3 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-3 without prior verification by the Corps.

**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/WaterPrograms/Wetlands\\_Waterways/permits\\_applications/index.asp](http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp). 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 I of the MDSPGP-3 Category List (Section IV.A.1). All terms and conditions of the MDSPGP-3 still apply to these activities.

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-3. They include, but are not limited to, the following State approvals, issued by the Maryland Department of the Environment (MDE), as applicable, which must be obtained in order for the MDSPGP-3 authorization to be valid.

1. Nontidal Wetlands authorization.
2. Waterway Construction authorization.
3. Tidal Wetlands authorization.

4. **Water Quality Certification (WQC):** A WQC has been issued for all Category I activities that meet the terms and conditions of the MDSPGP-3. WQC has also been issued for all Category II and Category III activities that meet the terms and conditions of the MDSPGP-3, subject to the condition that the applicants obtain all necessary permits and approvals from MDE. This condition assures that the activities authorized by the MDSPGP-3 will comply with applicable State water quality standards. Finally, all proposed activities meeting the conditions of the MDSPGP-3 that do not require authorization from MDE were issued WQC.

5. **Coastal Zone Consistency (CZC):** MDE issued a determination that all activities authorized by MDSPGP-3 will be carried out in a manner consistent with the Maryland Coastal Zone Management Program (CZMP), as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. The determination also concluded that all proposed activities meeting the conditions of the MDSPGP-3 that do not require authorization from MDE are consistent with the State's Coastal Zone Management Plan, as required by Section 307 of the Coastal Zone Management Act.

B. **MDSPGP-3 Verification Procedures:**

1. **Category I (Corps review may be 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-3, including the terms and activity-specific conditions of the MDSPGP-3 Category List. Category I activities are shown on the MDSPGP-3 Category List (Section IV.A.1). **NOTE:** All Category I activities that meet one or more of the circumstances described below in Section III.B.2, require an application and review by the Corps under Category II, i.e., any activity that meets both Category I and Category II requires an application to the Corps, regardless of whether or not the Category I activity condition says "No Application Required." 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-3 and that work can proceed as a Category I 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-3, including activity-specific conditions in the MDSPGP-3 Category List and any special conditions imposed by the Corps.

- Alternatively, the Corps may provide notice to the applicant that the proposed work interferes with a Federally-authorized civil works project, including Federal navigation projects. The Corps will coordinate with 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-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List 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 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-3 permit requirement by the Corps and the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List and any special conditions imposed by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, the applicant will be notified in writing that an alternate Corps permit review is required for the project.

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

NOTE: Certain MDSPGP-3 Category I 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-3 and the work can proceed as a Category I activity, provided all required State and local authorizations are obtained and the Corps is not requiring an alternate Corps permit review.

2. **Category II:** An application to the Corps is required for all Category I activities under any of the circumstances listed below in items a through f, in which case that activity must be screened under a Category II review process, i.e., any Category I activity that meets the following Category II screening criteria requires an application to the Corps, regardless of whether or not the Category I activity condition says "No Application Required." Category II activities are shown on the MDSPGP-3 Category List, Section IV.A.2.

- a. Activities In or Near Federally Authorized Civil Works Projects:
  - 1) The project is proposed within 150 feet of the horizontal limits of a Federal navigation project as described in Category II, IV.2.a(1). A Federal Navigation Channel Map is provided in the appendix of this permit.
  - 2) The project is proposed in or adjacent to other proposed or existing Federally-authorized civil works project, as described in Category II, IV.2.a(2);
- b. The project proposes permanent impacts of 200 linear feet or greater to stream channels;
- c. The project is grandfathered by the State from MDE's permit requirements, as described in Category II, IV.2.c;
- d. The project is exempt from MDE's permit requirements or not regulated by MDE's Wetlands and Waterways Program, as described in Category II, IV.2.d;
- e. Denials and Violations:
  - 1) The project has been previously denied a Corps or MDE authorization as described in Category II, IV.2.e(1); or
  - 2) The project 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 II, IV.2.e.(2).
- f. The project requires an individual essential fish habitat (EFH) consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act as described in Category II, IV.2.f.

In these instances, the Corps will review the application to ensure that Corps interests and concerns are addressed. The project proponent must submit an application to the Regulatory Services Coordination Office to satisfy the application requirements of this category.

Upon receipt and review of the required application, 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-3 and that work can proceed as a Category I 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-3, including activity-specific conditions in the MDSPGP-3 Category List and any special conditions imposed by the Corps.
- Alternatively, the Corps or MDE may provide 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-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List 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 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-3 permit requirement by the Corps and the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List and any special conditions imposed by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, the applicant will be notified in writing that an alternate Corps permit review is required for the project.
- Otherwise, the Corps will provide written notice to the applicant and MDE that an alternate Corps permit review is required.

3. **Category III:** Applications for projects whose total impacts, both direct and indirect as well as temporary and permanent, exceed the Category I activity's impact limits and/or do not comply with the activity's specific terms and conditions, as specified in Section IV.B.1, and do not exceed one acre, 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-3, and does not contain unresolved issues that would be of Federal interest (e.g., endangered or threatened species, wild and scenic rivers, etc.), then the Corps will notify MDE and/or the applicant that it has determined that the proposed project is eligible for authorization under the MDSPGP-3, provided the required State and local authorizations are obtained.

Category III applications will be coordinated with Maryland Historical Trust (MHT), Maryland Department of Natural Resources (DNR), Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), U.S. Coast Guard (USCG), if appropriate, to determine eligibility for authorization under the MDSPGP-3. The Corps will provide MDE, MHT, 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-3 is appropriate. For each Category III 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, 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, DNR, EPA, NMFS, FWS, and USCG may provide project-specific objections to authorizing the proposed work under the MDSPGP-3 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-3 verification.

For those Category III 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-3 permit requirement by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, the applicant will be notified in writing that an alternate Corps permit review is required for the project.

When a State public notice for a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required, MDE will issue a public notice to EPA, NMFS, FWS, 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 and Corps 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.

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, 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-3;
- c. Project is eligible for authorization under the MDSPGP-3, with special conditions; or
- d. Project is ineligible for authorization under the MDSPGP-3 and therefore requires an alternate Corps permit review.

When the Corps has made its determination, it will notify MDE and the applicant. 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-3 and that work can proceed as a Category III 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-3, including activity-specific conditions in the MDSPGP-3 Category List 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-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List 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 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-3 permit requirement by the Corps and the

applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-3. 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-3, including activity-specific conditions in the MDSPGP-3 Category List and any special conditions imposed by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, the applicant will be notified in writing that an alternate Corps permit review is required for the project.

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

4. **Agency Objection:** The resource agencies may request individual permit review of a project by notifying the Corps within the 15-day agency notification or State public notice comment period (or 30-day EFH review and comment period for NMFS). If the Corps agrees that 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 review is appropriate, the Corps will notify the agency of its intent to verify eligibility for authorization of the proposed project under the MDSPGP-3. The agency, at its discretion, may then pursue the agency objection procedures described below.

If FWS, EPA, or NMFS objects to the verification of a specific project under any Category of the MDSPGP-3, and if the Corps does not concur with the agency's objection, the agency has 15 calendar days from the close of the agency notification or joint public notice comment period, or from the date of the Corps notification that it does not concur with the agency's objection, whichever date is later, for a Regional Administrator/Director (EPA, FWS, NMFS) to express a formal objection, within the agency's area of expertise and/or authority, to verification for authorization under the MDSPGP-3. The Corps will attempt to resolve the objection, 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-3 and an alternate Corps permit review will be required. The Corps will notify MDE and the applicant that the project requires an alternate Corps permit review. However, should all objections be resolved, the project may be verified for authorization under the MDSPGP-3. This verification may include project specific special conditions to protect the public interest.

IV. **MDSPGP-3 Categories:**

A. **MDSPGP-3 Category List Index:**

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**NOTE:** Any required application is to be submitted to MDE’s Regulatory Services Coordination Office. In the following Category List, this has been abbreviated as MDE.

**B. MDSPGP-3 Category List:**

1. **Category I Activities:** The following activities are authorized under the Maryland State Programmatic General Permit-3 (MDSPGP-3) provided the proposed regulated activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-3 and the following applicable Category I activity-specific description(s) and condition(s). Work, including discharges, which does not qualify for authorization under Category I, will require submission of an application and will be reviewed under Category III or alternate Corps permit review procedures.

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

(1) **Channel and Harbor Navigation Aids:** This activity 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).

(a) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (ii) Channel and harbor navigation aids must be approved by, and installed in accordance with, the requirements of the United States Coast Guard.

(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 United States Coast Guard (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers).

(a) **Condition:** No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)

(3) **Piers:** This activity authorizes private, non-commercial piers (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers).

(a) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) This activity authorizes only 1 pier and 4 boat hoists or lifts per property.
- (iii) This activity does not authorize individual floating piers.
- (iv) If the pier is crossing open waters, it may 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.
- (v) Piers with 6-foot wide decking that cross open tidal waters must have their decking constructed a minimum of 4 feet above mean low water to minimize shading of SAV. Alternatively, decking of a pier over open tidal waters may be constructed no lower than 3 feet above mean low water if the deck width does not exceed 5 feet.
- (vi) The total area of all fixed and floating auxiliary platforms including Ts, Ls, and step down platforms must not exceed 200 square feet and must not be located over vegetated wetlands.
- (vii) Floating auxiliary structures authorized by this activity are limited to floating finger piers, including small floating jet-ski piers and platforms; and floating gangways provided the total square footage of these floating structures does not exceed 200 square feet for any one project.
- (viii) Platforms must not be constructed within the landward 50% of the main pier section.
- (ix) The project must not create more than 4 boat slips.
- (x) The project must not include more than 2 osprey poles per property.
- (xi) The project must not include more than 2 three-pile dolphins.

- (xii) The pier must not include more than two, 3-foot wide finger piers, and the finger piers must not exceed 50 % of the proposed slip length.
- (xiii) The project must meet the minimum extended property line setback requirements established by the local jurisdiction in which the activity is proposed. In localities where there are no set back requirements, the structure(s) must be constructed in a manner that does not obstruct ingress and egress from adjacent properties.
- (xiv) Piers must not extend within 100 feet of an MDE-approved water ski course.
- (xv) Piers must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high water line and/or vegetated tidal wetlands; provided the pier does 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 a Federal navigation channel.
- (xvi) This activity does not authorize dredging. Authorization of the pier is based upon current water depths and propeller dredging is not authorized.
- (xvii) 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.
- (xviii) Whenever possible, construction of the pier/platform shall be constructed from uplands, open water, or from the structure itself. Marsh mats shall be used if equipment is placed in vegetated wetlands and must be removed immediately following construction of the pier and the wetland area restored to its preconstruction condition if damaged.
- (xix) 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.

(4) **Marina/Community Piers Reconfiguration:** This activity authorizes reconfiguring an existing marina or community pier (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers).

(a) **Conditions:**

- (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/surface area of waters occupied by the existing community pier or marina structures/slips etc.
- (iv) There must be no increase in channelward encroachment beyond existing piers and associated structures.
- (v) This activity does not authorize construction of new buildings on pier.

(5) **Boat Ramp Construction, Repair and Expansion:** This activity authorizes discharges of dredged or fill material associated with construction of new boat ramps and repair and expansion of existing boat ramps (Sections 10 and 404; all waters of the United States, except special aquatic sites, including wetlands).

(a) **Impact Limits:** The boat ramp cannot exceed 20 feet in width and cannot extend more than 30 feet channelward of the mean high water line.

(b) **Conditions:**

- (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. This material may be placed over base materials which must be crushed stone, gravel, or other suitable material.
- (iii) This activity does not authorize use of unsuitable material or materials not structurally sound.
- (iv) Excavation must be limited to the area necessary for site preparation. 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) Boat ramps and associated discharges must not be placed in special aquatic sites, including wetlands.

(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).

(a) **Conditions:**

- (i) No application is required for Corps or State authorization. However, all mooring buoys must adhere to the Maryland Department of Natural Resources restrictions on where mooring buoys may be placed. (Refer to pages 36-37 for exceptions.)
- (ii) 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 permit review.
- (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.

(7) **Structures in Fleeting and Anchorage Areas:** Structures, buoys, floats, and other devices placed within 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).

(a) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (ii) The anchorage or fleeting areas must be established for these purposes by the U.S. Coast Guard.

(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).

(a) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) The buoys, markers and structures must be removed from the water within 30 days after the specific event or season has ended.
- (iii) 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.

(9) **Maintenance Dredging of Previously Authorized Dredge Areas:** This activity authorizes dredging below the plane of the ordinary high water mark or the mean high water mark as part of a single and complete project in previously authorized dredged areas (Sections 10 and 404; limited to all tidal waters).

(a) **Impact Limits:** The proposed dredge area must not exceed one acre (43,560 square feet) and must not exceed the dredging depths and footprint as was previously authorized.

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) Previous dredging within the project area must have been authorized by the Corps of Engineers no more than 10 years prior to the current proposal.
- (iii) Dredging may not be deeper than the water depths where the proposed dredge area will be connecting to.
- (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.
- (v) A post-dredging bathymetric survey (i.e., measurement of the depths of a water body) must be completed and returned to the Baltimore District Corps of Engineers along with the required compliance certification form within 60 days of completion of the dredging.
- (vi) Dredging, by any method, is prohibited during the period April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries for protection of peak summer flounder nursery activity in these waters.
- (vii) An assessment of the presence or absence of submerged aquatic vegetation within or near the proposed maintenance dredging area must be conducted (see Submerged Aquatic Vegetation Confirmation Protocol). If submerged aquatic vegetation is confirmed as present within the proposed maintenance dredge area, dredging, by any method, is prohibited during the period April 15 through October 15 of every year. However, if submerged aquatic vegetation is confirmed only in areas outside the dredge areas but within 500 yards of the planned dredging operation, mechanical dredging is prohibited during the period April 15 through October 15 of every year.

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

(a) **Impact Limits:** The dredged area must be 1,500 square feet or less and involve the removal of no more than 100 cubic yards of material.

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) This activity does not authorize dredging in the following circumstances:
  - within sites that support submerged aquatic vegetation (SAV) including sites where submerged aquatic vegetation has been documented to exist, but may not be currently present during any given year;
  - within sites used for spawning by anadromous fish;
  - within sites supporting natural oyster bars, or wetlands; or
  - for the connection of canals or other artificial waterways to adjacent water bodies.
- (iii) Dredging may not be deeper than the water depths where the proposed dredge area will be connecting to.
- (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.
- (v) Existing depths within the proposed dredge area must exceed 3 feet below mean low water.
- (vi) The landward edge of the dredge cut must be at least 15-foot channelward of the mean high water shoreline, unless the proposed dredge area is associated with a ramp, marine railway, or commercial travel lift.
- (vii) Dredging, by any method, is prohibited during the period April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries for protection of peak summer flounder nursery activity in these waters.
- (viii) An assessment of the presence or absence of submerged aquatic vegetation within or near the proposed dredging area must be conducted (see Submerged Aquatic Vegetation Confirmation Protocol). This activity does not authorize dredging in areas of submerged aquatic vegetation. However, if submerged aquatic vegetation is confirmed only in areas outside the dredge areas but within 500 yards of the planned dredging operation,

mechanical dredging is prohibited during the period April 15 through October 15 of every year.

- (ix) The dredging project must be a single and complete action, and not affiliated with a proposal by local/county government to improve access throughout a tidal tributary.
- (x) A post-dredging bathymetric survey (i.e., measurement of the depths of a water body) must be completed and returned to the Baltimore District Corps of Engineers along with the required compliance certification form, within 60 days of completion of the dredging.

b. **Repair and Maintenance Activities:** The following activities, listed below, must comply with each activity-specific condition, in addition to the general conditions of this permit.

(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. 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 also authorizes repair, rehabilitation, or replacement in-kind of structures destroyed 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 (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** The total temporary (i.e., construction impacts including stream diversion devices) and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, may not exceed 1.0 acre (43,560 square feet). 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 feet in any direction from the structure. 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.

(b) **Conditions:**

- (i) No application is required for Corps authorization except when the proposed total impacts (temporary and permanent) to tidal wetlands and/or tidal waters associated with this general maintenance activity exceed 10,000 square feet. An application must then be submitted to MDE for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (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.

- (iv) For replacement culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations.
- (v) 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.
- (vi) 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.
- (vii) Repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events must be started or under contract to start within two years of the date that they were damaged or destroyed.
- (viii) 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.
- (ix) This activity does not authorize the discharge of dredged or fill material for the purpose of reclaiming land lost through gradual erosion processes.
- (x) This activity does not authorize any maintenance dredging, beach restoration, stream restoration, stream relocation or channelization, and repair or replacement of bulkheads.
- (xi) This activity does not authorize blasting or other forms of uncontained in-water demolition.
- (xii) All excavated materials must be deposited and retained in an upland (non-wetland) area.
- (xiii) This activity does not authorize access roads proposed as part of utility maintenance.
- (xiv) Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.

(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. Any bank stabilization measures not directly associated with the structure will require a separate Corps authorization (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** The total temporary and permanent impact 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 may not exceed 1.0 acre (43,560 square feet).

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) The armoring must be the minimum necessary to protect the structure or to ensure the safety of the structure.
- (iii) This activity does not authorize stream channelization or stream relocation projects.
- (iv) 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) Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.

(3) **Bulkhead Repair or Replacement:** 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. This activity also authorizes the placement of broken concrete or riprap along the base of the bulkhead or other forms of vertical walls (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** For tidal work, the bulkhead repair or replacement must not extend more than 18 inches channelward of the existing structure, measured from the channelward face of the existing piling to the landward face of the proposed sheeting. For nontidal projects, discharges must not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark. In both tidal and nontidal waters, the work must not impact more than 10% of any adjacent marsh, wetland, or submerged aquatic vegetation (SAV). The total temporary and permanent impact to all waters of the United States may not exceed 1.0 acre (43,560 square feet).

(b) **Conditions:**

- (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 linear length of the replacement bulkhead/wall may not extend along the shoreline beyond the ends of the existing bulkhead/wall.
- (iv) The existing bulkhead/wall must be functional.
- (v) If the bulkhead repair or replacement includes placement of concrete along the base of the bulkhead, the concrete must be clean and free of rebar or other protruding reinforcement.
- (vi) Concrete or stone placed along the base of the replacement bulkhead must not extend more than 10 feet channelward of the bulkhead/wall in tidal waters.
- (vii) For nontidal projects, the work is not to extend across the streambed and not to adversely modify the stream morphology and hydrology.

(4) **Maintenance of Tidal Roadside Ditches:** This activity authorizes maintenance clean-out of tidally influenced roadside drainage ditches and their outlets (Section 10, not subject to Section 404; limited to all tidal wetlands and waters).

(a) **Impact Limits:** The total temporary and permanent impact to all waters of the United States, which includes tidal ditches and tidal wetlands, may not exceed 1.0 acre (43,560 square feet).

(b) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (ii) This activity authorizes work only in roadside ditches and their outlets that are subject to the ebb and flow of the tide.
- (iii) 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.
- (iv) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch from its original design dimensions and configurations. Maintenance can not expand the area drained by the ditch beyond original design.
- (v) 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.

- (vi) 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.

(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 (Section 10 and Section 404 for the placement on marsh, in accordance with the activity specific conditions; limited to all tidal ditches and wetlands).

(a) **Impact Limit:** The total temporary and permanent impact to all waters of the United States, which includes tidal ditches and tidal wetlands, may not exceed 1.0 acre (43,560 square feet). The acreage of impact to tidal ditches and tidal wetlands includes the excavated area, plus areas filled above wetland elevations with sidecasting.

(b) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions).
- (ii) 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.
- (iii) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch or pond from its original design dimensions and configurations.
- (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 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.

c. **Underground and Overhead Utility Lines:** This activity authorizes discharges of dredged or fill material associated with excavation, backfill, and bedding for utility lines provided there is no change in preconstruction 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. This activity also authorizes mechanized land clearing, construction of temporary and permanent access roads for the utility line, and foundations associated with overhead utility lines (Section 10 and 404; all waters of the United States).

(1) **Impact Limits:** The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, may not exceed 1/2 acre (21,780 square feet). Included in this areal limit, is a total maximum distance impact limit to streams, rivers, and other open waters of no more than 500 linear feet. For all access road crossings, total temporary and permanent impacts to streams, rivers, and other open waters are limited to no more than 200 linear feet in length of the maximum allowable 500 linear feet.

(2) **Conditions:**

- (a) Application must be submitted to MDE for Corps authorization.
- (b) Impacts shall be minimized by using directional drilling, jack and bore, missile, or similar methods when practicable.
- (c) Any utility line and road crossing of tidal waters is limited to man-made tidal ditches or channels (e.g., roadside and agricultural ditches) that are no more than 12 feet wide measured at the mean high water line. All other utility line and road crossings of tidal waters are to be reviewed as Category III activities.
- (d) When underground utility lines are installed in streams and wetlands, bedding material must not promote drainage of the streams and wetlands. Clay plugs, impervious membranes, or other materials must 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.
- (e) The top of the cable, encasement, or pipeline shall be located a minimum of three 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 one foot from the lowest point in the natural contour of the streambed shall be maintained.
- (f) 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.
- (g) 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.
- (h) Limit-of-disturbance easements for the construction of utility lines within waters of the United States, including wetlands, must be limited to the minimum width necessary and must not exceed 30 feet in width.
- (i) Immediately after construction of the utility line is completed, 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.

- (j) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.
- (k) 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).
- (l) For permanent culvert crossings, the culvert shall be depressed in accordance with the State of Maryland regulations.
- (m) Any temporary crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions, and no later than one year after the installation date.
- (n) 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 reduce the adverse effects of the project to the minimal level. This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.
- (o) Prospective permittees should refer to General Condition VI.C.6 of the MDSFGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.

d. **Road Crossings:** This activity authorizes discharges of dredged or fill material associated with new construction of temporary and permanent roads, as well as widening of existing roads, which cross waters of the United States, including streams and wetlands. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

New road crossings 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) **Impact Limits:** The total temporary and permanent impact to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, may not exceed ½ acre (21,780 square feet) and 500 linear feet of streams, rivers, and other open waters. In addition, no single road crossing can exceed 200 linear feet of streams, rivers, or other open waters. This activity can authorize multiple road crossings provided that the total temporary and permanent impact of all of the crossings meets the one half acre (21,780 square feet) and 500 linear feet impact limit, with no single crossing over 200 linear feet of impact to streams, rivers, and other open waters. To assure minimum impact when permanent impacts to streams, rivers, and other open waters are greater than 200 linear feet, a compensatory mitigation proposal may be required.

(2) **Conditions:**

- (a) Application must be submitted to MDE for Corps authorization.
- (b) Any permanent road crossing of tidal waters is limited to man-made tidal ditches or channels (e.g., roadside and agricultural ditches) that are no more than 12 feet wide measured at the mean high water line. All other

permanent road crossings of tidal waters are to be reviewed as Category III activities.

- (c) The width of the fill must be limited to the minimum necessary for the crossing.
- (d) For permanent culverted crossings, the culvert must be depressed in accordance with the State of Maryland regulations.
- (e) The crossing must not be used as a berm for a permanent impoundment.
- (f) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the road crossing is completed.
- (g) Any temporary crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions, and no later than one year after the installation date.
- (h) 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.
- (i) Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.

e. **Fill Activities:** The following activities, listed below, must comply with each activity-specific condition, 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).

(a) **Impact Limits:** The total temporary and permanent impact to waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters may not exceed ½ acre (21,780 square feet) and 300 linear feet of stream channels, rivers, and other nontidal open waters. To assure minimum impact, when permanent impacts to streams, rivers, and other nontidal open waters are greater than 200 linear feet, a compensatory mitigation proposal may be required.

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) This activity authorizes work only in nontidal wetlands, streams, rivers, and other nontidal open waters.
- (iii) This activity does not authorize types of work for which there are specific Category I activities, such as road crossings, utility lines, etc.

- (iv) This activity does not authorize stream restoration 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, 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, 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 (Section 10 and 404; all waters of the United States).

(a) **Impact Limits:** The total temporary and permanent impact to waters of the United States, which includes wetlands, streams, and other open waters, may not to exceed ½ acre (21,780 square feet). Included in this areal limit, is a maximum distance impact limit to streams and other open waters of no more than 300 linear feet.

(b) **Conditions:**

- (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 VI.A.5 concerning “single and complete project.”)
- (iii) For discharges into waters of the United States to improve agricultural production, if the permittee is a USDA program participant, they must:
  - obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended,
  - have a NRCS-certified wetland delineation, and
  - 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) Any activity in waters of the United States, other than wetlands, is limited to the relocation of no more than 300 linear feet of existing serviceable drainage ditches constructed in nontidal streams.
- (vi) This activity does not authorize any work in perennial streams except for those activities that meet condition b.(v) above.
- (vii) This activity does not regulate discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, as described in Department of the Army (DA) regulations at 33 CFR 323.4.
- (viii) 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.
- (ix) Tide gates must be placed as close as possible to the affected agricultural field.
- (x) 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 activities include core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, percolation tests for sewage disposal fields, survey markers or survey monuments, piezometers and groundwater monitoring devices, and historic resources surveys. 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 gauges, water recording devices, water quality testing and improvement devices, small weirs and flumes constructed to record water quantity and velocity, and similar structures. This activity also authorizes temporary road crossings for the purpose of accessing the test site. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act (Sections 10 and 404; all waters of the United States).

(a) **Impact Limit:** 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, may not exceed ½ acre (21,780 square feet). Included in this areal limit, is a maximum distance impact limit to streams, rivers, navigable waters, and other open waters of no more than 500 linear feet. For all temporary access road crossing construction, which can be multiple crossings, temporary impacts to streams, rivers, navigable waters, and other open waters are limited to no more than 200 linear feet in length for each crossing.

(b) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (ii) This activity does not authorize discharges and structures associated with the recovery of historic resources.
- (iii) 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.

- (iv) This activity does not authorize discharges of fill placed for permanent roads, pads and other similar structures and activities.
- (v) This activity does not authorize any permanent structures, except survey markers or monuments.
- (vi) Temporary road crossings of tidal waters are limited to those with a channel no more than 12 feet wide measured at the mean high water line.
- (vii) The width of the fill must be limited to the minimum necessary for the temporary road crossing.
- (viii) The temporary road crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions, and no later than one year after the installation date.
- (ix) Any streams or wetlands impacted for the temporary road crossing must be returned to pre-construction conditions which include contours, elevations, stream substrate, and revegetation with native species upon completion of the investigation or survey work.

(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 conditions listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** 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, may not exceed ½ acre (21,780 square feet). Included in this areal limit, is a total maximum distance impact limit to stream channels, rivers, navigable waters, and other open waters of no more than 500 linear feet. Up to 25 cubic yards of sediment may be removed from the hydrant intake.

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) The dry hydrants must be installed for the purpose of providing water for fire fighting.
- (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. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit. (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** 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 may not exceed ½ acre (21,780 square feet). Included in this areal limit is a maximum distance impact limit to streams, rivers, navigable waters, and other open waters of no more than 500 linear feet.

(b) **Conditions:**

- (i) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (ii) 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.
- (iii) This activity does not authorize dredging, shoal removal, or river bank snagging.
- (iv) This activity does not authorize the construction of access roads.

(6) **Special Area Management Plan (SAMP) Study Area Projects:**

This activity authorizes discharges of dredged or fill material in all nontidal wetlands and streams and all tidal wetlands and waters within a designated SAMP Study Area that have been determined to be eligible for impact, provided it meets the terms and conditions specified in the subject SAMP. The affected local government must have officially adopted the SAMP and the Corps of Engineers Regulatory Branch must be a collaborative member of the interagency team that developed the subject SAMP and a signatory to the SAMP. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit. Work, including discharges, that does not meet these impact limits and/or conditions, or are proposed in areas designated for protection by the subject SAMP, does not qualify for authorization under this activity. (Sections 10 and 404; limited to all nontidal wetlands and streams, and all tidal wetlands and waters).

(a) **Impact Limits:** The total temporary and permanent impact to waters of the United States is limited to those areas determined to be eligible for impacts under a SAMP document not to exceed one acre (43,560 square feet).

(b) **Conditions:**

- (i) Application must be submitted to MDE for Corps authorization. Use short form application, if developed for the subject SAMP Study Area.
- (ii) Property on which the activity is proposed must have an approved jurisdictional determination of waters of the United States, including jurisdictional wetlands, as shown in the final SAMP document for the subject Study Area.
- (iii) This activity does not authorize any discharges of dredged or fill material in tidal wetlands for non-water dependent purposes.
- (iv) Any permanent road crossing of tidal waters is limited to man-made tidal ditches or channels (e.g., roadside and agricultural ditches) that are no more than 12 feet wide measured at the

mean high water line. All other permanent road crossings of tidal waters are to be reviewed as Category III activities.

- (v) This activity does not authorize water withdrawals; channelization; pipe installation; and the construction of berms, dams, or any impoundments, including stormwater management facilities, in tidal wetlands or waters.
- (vi) Best Management Practices (BMPs) developed/identified by the interagency team will be implemented as indicated in the subject SAMP document.
- (vii) Compensatory mitigation for authorized impacts will be performed at the mitigation site(s) designated for the SAMP Study Area.

(7) **Temporary Construction, Access, Stream Diversions, and Dewatering for**

**Construction:** This activity authorizes temporary discharges of dredged or fill material associated with temporary structures, work and discharges, 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 of Engineers or the United States Coast Guard (USCG), or for other construction activities not subject to the Corps or USCG regulations (Sections 10 and 404; all waters of the United States)

(a) **Impact Limits:** The total temporary impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, may not exceed ½ acre (21,780 square feet) and no more than 500 linear feet of streams, rivers, navigable waters, and other open waters. The entire length of diverted stream is considered impacted.

(b) **Conditions:**

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

(8) **Outfall Structures and Associated Intake Structures:** This activity authorizes discharges of dredged or fill material associated with the construction of new 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. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Impact Limits:** 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 may not exceed ½ acre (21,780 square feet).

(b) **Conditions:**

- (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.

f. **Shoreline and Stream Bank Stabilization Activities:** The following activities, listed below, must comply with each activity-specific condition, in addition to the general conditions of this permit.

Tidal shoreline stabilization activities 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; (b) shoreline revetments, breakwaters, groins, and similar structures designed to ensure establishment and long-term viability of nonstructural shoreline stabilization projects; (c) shoreline revetments; (d) breakwaters; (e) groins; and (f) bulkheads. Written documentation may be required to support the preferred stabilization method.

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.

(1) **Tidal Revetments, Tidal Shoreline Erosion Control Structures (not revetments), Existing Tidal Revetment/Bulkhead Armoring, and Nontidal Stream Bank Stabilization:** This activity authorizes discharges of dredged or fill material associated with construction of tidal shoreline erosion control structures, construction of new tidal revetments, the addition of stone or broken concrete to an existing tidal revetment or bulkhead, and installation of nontidal stream bank stabilization structures, . All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to all waters and wetlands).

(a) **Impact Limits:**

For new tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills), the structure is limited to 500 linear feet in length along the shoreline, must not extend more than 10 feet channelward of the mean high water line and must not impact more than 10% of any adjacent marsh, wetland or SAV, with total impact to waters of the United States, including wetlands, not to exceed 5,000 square feet.

For existing revetment/bulkhead armoring, the work must not extend more than 10 feet channelward of the existing structure (i.e., revetment or bulkhead) and must not impact more than 10% of any adjacent marsh, wetland, or submerged aquatic

vegetation (SAV) for each 500 foot section of armoring. Armoring is limited to the length of the existing bulkhead or revetment, with a total impact to waters of the United States, including wetlands, not to exceed ½ acre (21,780 square feet).

The nontidal bank stabilization itself is limited to 500 feet in total length and must not impact more than 10% of any adjacent marsh, wetland, or submerged aquatic vegetation (SAV), with total impact to waters of the United States, including wetlands, not to exceed ½ acre (21,780 square feet).

(b) **Conditions:**

- (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) 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.
- (iv) The activity must be constructed as close to the uplands and/or bank as structurally feasible.
- (v) This activity does not authorize reclaiming eroded land.
- (vi) 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.
- (vii) Filter cloth must be used or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.
- (viii) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.
- (ix) Toe protection for new bulkheads is also authorized.
- (x) Any new revetment or tidal shoreline erosion control structure must be constructed parallel to the uplands.
- (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) Direct displacement of woody riparian vegetation should not exceed 25% within a 25-foot wide strip measured landward of the ordinary high waterline of the stream. Impacts to woody

vegetation resulting from soil compaction around the root zone by heavy equipment should be minimized.

- (xiv) Large-scale stream restoration projects are not authorized by this activity (i.e., project greater than 500 linear feet and/or with greater than ½ acre (21,780 square feet)) of impact. These must be reviewed as a Category III activity or under the Nationwide Permit #27 process.
- (xv) Discharges associated with nontidal bank stabilization projects must not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark.

(2) **Tidal Marsh Creation/Beach Nourishment:** This activity authorizes discharges of fill material and the construction of stone containment structures such as groins or low profile stone sills, in unvegetated (i.e., no adjacent marsh, wetland or SAV) shallow water along shorelines to facilitate tidal marsh creation and/or beach nourishment for the purpose of shoreline erosion control only. Low profile stone sills are not authorized for use with beach nourishment projects. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and conditions listed below, in addition to the general conditions of this permit. Work, including discharges, that does not meet the impact limits and/or conditions does not qualify for authorization under Category I and will be reviewed under Category III or alternate Corps permit review (Sections 10 and 404; limited to all tidal waters and wetlands).

(a) **Impact Limits:** Total impact is limited to one acre (43,560 square feet) to unvegetated (i.e., no adjacent marsh, wetland or SAV) shallow waters.

(b) **Conditions:**

- (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 fill and containment structures must not extend more than 35 feet channelward of the mean high water line.
- (iv) The fill must be placed parallel to the upland.
- (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 marsh establishment area must be planted within six 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 three 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) An assessment of the presence or absence of submerged aquatic vegetation within or near the proposed impact area must be conducted (see Submerged Aquatic Vegetation Confirmation Protocol). This activity does not authorize impacts to areas having submerged aquatic vegetation. However, if submerged aquatic vegetation is confirmed only in areas outside the marsh creation and/or beach nourishment site but within 500 yards of the proposed activity, the discharge of dredged or fill material shall be prohibited during the period April 15 through October 15 of every year.

g. **Return Water:** This activity authorizes the discharge of return water from upland, contained dredged material disposal areas into waters of the United States (Section 404 only).

(1) **Condition:** No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)

h. **Oyster Aquaculture:** This activity authorizes the placement of floats in the water by riparian landowners for purposes of conducting oyster aquaculture activities, subject to the activity-specific impact limits; the activity-specific special conditions; and the general conditions of this programmatic general permit (Section 10; tidal waters of the United States).

(1) **Impact Limits:** The surface area of the floats must not exceed 60 square feet of total coverage of the water column.

(2) **Conditions:**

- (a) No application is required for Corps authorization. (Refer to pages 36-37 for exceptions.)
- (b) The native eastern oyster (*Crassostrea virginica*) shall be the species used in the oyster aquaculture activity in the floats.
- (c) The floats 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) The riparian owner shall mark all in-water floats with high visibility colors and lighted or otherwise marked in accordance with the U.S. Coast Guard's (USCG) requirements. The riparian owner shall ensure that the location of the structures is published in the USCG's "Local Notice to Mariners." The

riparian owner shall contact: Commander (AOWW), USCG Atlantic Area, 431 Crawford Street, Portsmouth, Virginia 23704, to ensure that all USCG requirements are met regarding this activity.

- (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 3,000 per site.
- (m) The riparian owner shall obtain oyster seed from a Maryland vendor or obtain an approved Shellfish Import Permit from the Maryland Department of Natural Resources (MDNR).
- (n) The riparian owner must not collect or release oysters without having obtained beforehand a valid Collection or Stocking permit from MDNR.
- (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) All works shall be performed in accordance with the Water Quality Certification issued by the Maryland Department of the Environment for this general permit.
- (r) 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 Maryland Department of Agriculture, Aquaculture Coordinator, 50 Henry S. Truman Parkway, Annapolis, MD 21401 by December 31 annually.

2. **Category II Activities:** The following activities may be authorized under the Maryland State Programmatic General Permit-3 (MDSPGP-3) after 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-3.

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

(1) **Activities In or Near Federal Navigation Projects:** This activity applies to Category I projects that extend closer than 150 feet of the horizontal limits of any Federal navigation project, which is considered to be a Federally-authorized civil works project. Structures or work that exceed the Category I individual activities' impact limits and conditions and extend closer than 150 feet of the horizontal limits of any Federal navigation project will be reviewed under Category III or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

(2) **Activities In or Near Other Federally Authorized Civil Works Projects:** This activity applies to Category I projects that are proposed in or adjacent to any proposed or existing Federally-authorized civil works project other than a Federal navigation project. Structures or work that exceed the Category I individual activities' impact limits and conditions and that are proposed in or adjacent to any Federally-authorized civil works project will be reviewed under Category III or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

b. **Activities Proposing 200 Linear Feet or More of Stream Impact:** This activity applies to Category I projects that are proposing permanent impacts of 200 linear feet or greater to stream channels. Projects that exceed the Category I individual activities' impact limits and conditions and exceed 200 linear feet or more of permanent impacts to stream channels will be reviewed under Category III or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

c. **Activities Grandfathered by MDE:** This activity applies to Category I projects that are grandfathered from MDE's permit requirements. Grandfathered activities that exceed the Category I individual activities' impact limits and conditions will be reviewed under Category III or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

d. **Activities Exempt from MDE's Permit Requirements or not regulated by MDE's Wetlands and Waterways Program:** This activity applies to Category I projects that require Corps authorization under Section 10 and/or 404 and that meet the impact limits and conditions of the Category I individual activities, but that are exempt under applicable State law. Activities that require Corps authorization under Section 10 and/or 404, but that do not meet the impact limits and conditions of Category I individual activities and are exempt from MDE's permit requirements, will be reviewed under Category III or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

e. **Denials and Violations:**

(1) **Denials:** This activity applies to Category I 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 Water Quality Certification or a Coastal Zone Consistency Certification. This activity also applies to Category I projects that have been previously denied Department of the Army authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. 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 I individual activities' impact limits and conditions 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 III, or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

(2) **Violations:** This activity applies to Category I 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 Clean Water Act, i.e., after-the-fact applications or completed or partially-completed work that is discovered in the review of a Category I application. This activity also applies to Category I 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 I individual activities' impact limits and conditions 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 III, or alternate Corps permit procedures, as appropriate. Application must be submitted to MDE for Corps authorization for any of these violation instances.

f. **Activities requiring an individual essential fish habitat (EFH) consultation:** This activity applies to Category I 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.

3. **Category III Activities:** Category III activities may be authorized under the Maryland State Programmatic General Permit-3 (MDSPGP-3) after review by the Corps and coordination with appropriate State and Federal resource agencies, provided the proposed activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-3.

This activity authorizes work that does not meet the impact limits and/or the terms and conditions of any activity described in Categories I or II, and that impacts no more than one acre of nontidal or tidal waters of the United States, including wetlands. 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. Work proposed under this activity requires a 15-day notification to the following agencies: EPA, FWS, NMFS, MHT, DNR, MDE, and USCG, when appropriate. A 30-day review and comment period to NMFS is required for Category III projects that may adversely affect EFH. Work proposed under this 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.

4. **Definitions:** Terms are referenced in the Category I, II and/or III activities. These 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 Notice of Issuance and Modification of Nationwide Permits, as published in the January 15, 2002 Federal Register, Vol. 67, No. 10. (67 FR 10)
- 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)

**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 (67 FR 10, p.2094).

**Discharge of dredged material:** Means any addition of dredged material, including "redeposit of dredged material other than incidental fallback," into the waters of the United States. (51 FR 219, p. 41232 and 64 FR 89, p. 25123) (i) The Corps and EPA regard the use of mechanized earth-moving equipment to conduct landclearing, ditching, channelization, in-stream mining or other earth-moving activity in waters of the United States as resulting in a discharge of dredged material unless project-specific evidence shows that the activity results in only incidental fallback. (ii) 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 when such small volume of soil or dirt falls into substantially the same place from which it was initially removed (66 FR 11, p. 4575).

**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. This term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Clean Water Act (67 FR 90, p. 31129). See this reference for definition of “discharge of fill material.”

**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 (67 FR 10, p.2094).

**Independent utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. 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 (67 FR 10, p.2094).

**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 (67 FR 10, p. 2094).

**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) (67 FR 10, p.2094).

**Open water:** An area that, during a year with normal patterns of precipitation, has standing or flowing water 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. (67 FR 10, p. 2094)

**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).

**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).

**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).

**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 (67 FR 10, p.2094).

**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.

**Single and complete project:** The term “single and complete” project is defined at 33 CFR 330.2(1) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the “single and complete project” (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and

complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies (67 FR 10, p. 2095).

**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 (67 FR 10, p. 2095).

V. **Alternate Corps Permit Review:** Activities that require DA authorization, but that do not meet the terms and/or conditions of the MDSPGP-3 are ineligible for authorization/verification under the MDSPGP-3 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-3. At that time, the Corps may verify MDSPGP-3 eligibility for the project.

If a project is ineligible under the terms and conditions of the MDSPGP-3, 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-3 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. WQC and CZC may be included as part of MDE's tidal wetlands or nontidal wetlands and waterways authorizations.

VI. **General Conditions:** To qualify for MDSPGP-3 authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any activity-specific conditions in the MDSPGP-3 category list and any case-specific special conditions imposed by the Corps.

A. **General Requirements:**

1. **Other Permits:** Authorization under the MDSPGP-3 does not obviate the need to obtain other Federal, State, or local authorizations required by law.
2. **Applicability:** Applicability of the MDSPGP-3 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 delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and appropriate guidance issued by the Corps of Engineers.
3. **Minimal Effects:** Projects authorized by the MDSPGP-3 shall have no more than minimal individual and cumulative adverse environmental effects.
4. **Discretionary Authority:** Notwithstanding compliance with the terms and conditions of the MDSPGP-3, the Corps retains discretionary authority to require an alternate Corps permit review for any project under all categories of the MDSPGP-3 based on concerns for the aquatic environment or for any other factor of the public interest. This authority may be invoked on a case-by-case basis during the review process for Category III 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 I activity. In order to evaluate this project under an alternate Corps permit review, the verification must be suspended in accordance with Section VII.E of the MDSPGP-3.

Whenever the Corps notifies an applicant that an alternate Corps permit may be required, authorization under the MDSPGP-3 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-3.

5. **Single and Complete Projects:** The MDSPGP-3 shall not be used for piecemeal work and shall be applied to single and complete projects, including maintenance activities. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project. All planned phases of multi-phased projects (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be applied for and reviewed together as constituting one single and complete project. The MDSPGP-3 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.

6. **Use of Multiple MDSPGP-3 Category I Activities:** More than one Category I activity may be used to authorize a single and complete project under the MDSPGP-3. However the project must meet the specific requirements of each Category I activity and the total extent of project impacts must not exceed the acreage limit of the Category I activity with the highest specified acreage limit (e.g., if armoring the toe of an existing culvert is constructed under Category I.b(2) with an associated nontidal bank stabilization authorized under Category I.f(1), the maximum total impact limits to waters of the United States for the single and complete project may not exceed 1.0 acre (43,560 square feet).

7. **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 of Engineers, 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 U.S. Code of Federal Regulations, Title 33, Part 64 states that all structures erected in navigable waters in depths in excess of three feet at mean low water (MLW) require obstruction lights unless the applicant is advised to the contrary by the Coast Guard District Commander. If the structures authorized by this permit are to be built in water depths in excess of three feet at MLW, 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.

**B. National Concern:**

1. **Historic Properties:** Any activity authorized by the MDSPGP-3 shall comply with Section 106 of the National Historic Preservation Act. MDE, in cooperation with the Maryland Historic Preservation Office, 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 if consultation under Section 106 with MHT or the Advisory Council on Historic Preservation is required. The applicant must notify the Corps if 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. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the permit area subject to DA jurisdiction that might be eligible for listing in the National Register of Historic Places, the permittee shall immediately stop work in the permit area and notify the District Engineer. 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 Maryland Historic Trust, Office of Preservation Services, and the National Register of Historic Places.

2. **National Lands:** Activities authorized by the MDSPGP-3 shall not impinge upon the value of any Federal land, including but not limited to, National Wildlife Refuges, National Forests, National Marine Sanctuaries or any area administered by the National Park Service (e.g., Assateague Island National Seashore).

3. **Endangered Species:** The MDSPGP-3 does not authorize any activity that may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA); or which may 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 the procedures outlined in the MDSPGP-3 Standard Operating Procedures. MDE, in cooperation with 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 FWS and NMFS.

4. **Essential Fish Habitat (EFH):** 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. EFH 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-3 Category I activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. NMFS, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category I (includes those projects requiring EFH screening process under Category II) and all Category III projects of the MDSPGP-3 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category II and Category III 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 can not be resolved under the MDSPGP-3 process, an alternate Corps permit review is required for the project.

5. **Wild and Scenic Rivers:** No activity is authorized under the MDSPGP-3 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 U. S. Fish and Wildlife Service.)

6. **Federally Authorized Civil Works Projects:**

a. **Federal Navigation Projects:** The MDSPGP-3 does not authorize interference with any Federal navigation project. 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 of Engineers, 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 VI.A.7.a. above)

b. **Other Federally Authorized Civil Work Projects (i.e., flood control, dams, and reservoirs):** The MDSPGP-3 does not authorize interference with any proposed or existing Federally-authorized civil works project.

7. **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-3 or any specific MDSPGP-3 verification.

8. **Navigation:** Projects authorized under the MDSPGP-3 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-3. Nothing in the MDSPGP-3 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 VI.A.7.a. above)

C. **Minimization of Environmental Impacts:**

1. **Minimization:** Discharges of dredged or fill material into waters of the United States and adverse impacts of such discharges on the aquatic ecosystem shall be avoided and minimized to the maximum extent practicable on-site.

2. **Mitigation:**

a. Generally, compensatory mitigation will be required for all permanent tidal or nontidal wetland impacts either through the State's tidal or nontidal wetland compensation fund or by the permittee as required by special condition of the MDSPGP-3 or the State authorization.

b. Generally, compensatory mitigation will be required for all permanent impacts of 200 linear feet or greater to stream channels, rivers, and other open waters as appropriate under Federal guidance and to the extent necessary to ensure that the impacts are minimal. A proposed compensatory mitigation proposal may be submitted with the application to expedite the process. The Corps will determine if the project is eligible for authorization under the MDSPGP-3 subject to the applicant's submittal of a compensatory mitigation proposal for stream impacts. Compensatory mitigation plans for projects in or near streams or other open waters will generally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns.

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 Mats:** Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP-3. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-3 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 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 the area, 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. NOTE: Please refer to Appendix C for an expanded version of General Condition VI.C.6 entitled, "Guidance for Constructing Man-Made Stream Crossings and Scour Protection for Man-Made Stream Crossings to Pass Migratory Fish in The Coastal Plain Region of Maryland, and Lower Piedmont Region of Cecil, Harford, and Baltimore Counties, Maryland". This document includes recommended guidance on fish passage and hydrological parameters to ensure that man-made stream crossings do not adversely affect migratory fish.

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 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-3 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.

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., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

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-3 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.

**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-3. 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-3 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 blank Compliance Certification Form will be forwarded to the permittee with the MDSPGP-3 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-3 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-3 verification, including any general and/or specific conditions, 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, MD 21203-1715**

3. **Transfer of MDSPGP-3 Verifications:** If the permittee sells the property associated with a MDSPGP-3 verification, the permittee may transfer the MDSPGP-3 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-3 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-3 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-3, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-3 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 maintain the work or structure authorized by the MDSPGP-3 in good condition and in compliance with the terms and conditions of the MDSPGP-3.

5. **Property Rights:** The MDSPGP-3 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-3, 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.

7. **Restoration:** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-3, shall 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-3, 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:** If the project is verified by the Corps or MDE under the MDSPGP-3 and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the MDSPGP-3 verification may be revoked and the Government 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-3 that includes the MDSPGP-3 Category List activity-specific conditions, constitutes unauthorized work and is subject to an enforcement action by the Corps or the EPA. Furthermore, the MDSPGP-3 does not delegate any Section 404 enforcement or regulatory authority. When unauthorized work occurs in waters of the United States, including wetlands and navigable waters, it 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.

## **VII. Duration of Authorization:**

### **A. Duration of Authorization:**

1. The MDSPGP-3 is authorized for a period of five years from the effective date listed at the top of page 2. For individual projects verified/authorized by the MDSPGP-3, the construction period expires when the MDSPGP-3 expires, is suspended, or revoked, whichever date occurs sooner.

2. If the MDSPGP-3 is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void.

3. Activities authorized under the MDSPGP-3 that have commenced construction or that are under contract to commence construction, prior to the expiration, modification, or revocation date of the MDSPGP-3 itself, will remain authorized, provided the activity is completed within 12 months of the date of the MDSPGP-3's expiration, modification, or revocation. If a specific MDSPGP-3 verification has been modified, suspended, or revoked, this provision does not apply.

**B. Previously Authorized Activities:**

1. Projects that were completed based on written verification from the Corps under the MDGP-1, MDSPGP-1, MDSPGP-2, nationwide permit, regional general permit, or letter of permission for applications made prior to the effective date of the MDSPGP-3, shall remain authorized, as specified in their original project-specific verification, and need no further reverification.

2. Projects that have received written, project-specific verification under the MDSPGP-2 based on applications made prior to the effective date of the MDSPGP-3, and have not been completed, but that meet the terms and conditions of the MDSPGP-3, including the applicable activity-specific impact limits and conditions, remain authorized until the expiration of the MDSPGP-3. Conversely, projects that have received written, project-specific verification under the MDSPGP-2, based on applications made prior to the effective date of the MDSPGP-3, but that have not been completed and that do not meet the terms and conditions of the MDSPGP-3, including the applicable activity-specific impact limits and conditions, have 12 months from the effective date of the MDSPGP-3 to complete the work under the terms and conditions of the MDSPGP-2. If the work cannot be completed within 12 months from the effective date of the MDSPGP-3, the project must receive written reauthorization under the MDSPGP-3 from the Corps or MDE, as appropriate. If the project is grandfathered by MDE, the request for reauthorization will be forwarded to the Corps for review under Category II or III procedures.

3. Activities authorized pursuant to 33 CFR part 330.3 (activities occurring before certain dates) are not affected by the MDSPGP-3.

**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-3. The Corps will determine whether or not to continue use of the MDSPGP-3 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-3, in accordance with DA Regulations.

**D. Reporting and Evaluation:**

1. MDE will provide annual data and statistics to the Baltimore District Engineer describing its implementation of the MDSPGP-3. These reports shall include information on the types and numbers of activities authorized under the MDSPGP-3, including specific types and numbers of activities authorized under Categories III; 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.

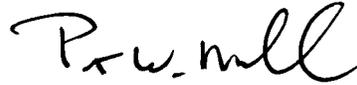
2. The Corps, in consultation with MDE and the resource agencies, shall review operational issues related to successful implementation of the MDSPGP-3 and shall coordinate and provide modifications to the operational procedures, the Standard Operating Procedures document, and/or the MDSPGP-3, as appropriate.

3. Prior to the expiration of the MDSPGP-3, the Corps, with recommendations from the resource agencies will evaluate the MDSPGP-3, including its terms and conditions, and will determine if: (1) the MDSPGP-3 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-3 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-3 authorization for any specific geographic area, class of activities, class of waters, or any case-specific verification under the MDSPGP-3, within the State of Maryland, by issuing a public notice or notifying the MDE and the permittee involved. The MDSPGP-3 will expire on September 30, 2011.

By Authority of the Secretary of Army:

A handwritten signature in black ink, appearing to read "P. W. Mueller". The signature is written in a cursive, flowing style.

Peter W. Mueller  
Colonel, Corps of Engineers  
District Engineer