



**Memorandum of
Understanding
Between
The State of Maryland
And
The United States Department of Defense**

This Memorandum of Understanding is entered into this 8th day of May, 2013, to evidence and affirm the mutual understanding of the State of Maryland and the United States Department of Defense, the Parties to the Agreement herein, concerning the Federal consistency requirements of the Coastal Zone Management Act (16 U.S.C. § 1451 et seq) and the application and implementation of certain enforceable policies of Maryland's Coastal Zone Management Program.

WHEREAS, the Department of Defense and the State of Maryland are committed to using the Federal consistency process to protect coastal uses and resources within Maryland's Coastal Zone;

WHEREAS, the Coastal Zone Management Act was enacted by Congress on October 27, 1972 to encourage coastal States, Great Lakes States and U.S. territories and commonwealths to be proactive in managing natural resources for their benefit and for the benefit of the Nation with the main objectives of preserving, protecting, developing, and where possible, restoring or enhancing the resources of the Nation's Coastal Zone;

WHEREAS, the Department of Defense is required under the Coastal Zone Management Act to demonstrate consistency to the maximum extent practicable with the approved, enforceable policies of Maryland's Coastal Zone Management Program, as approved by the National Oceanographic and Atmospheric Administration, for all projects and activities having reasonably foreseeable effects on land or water use or natural resources of Maryland's Coastal Zone. **The review of activities on Federal lands for consistency with Maryland's Enforceable Coastal Policies only applies to the extent that those activities have reasonably foreseeable effects on coastal uses or resources of the State.** Federal lands subject solely to the discretion of the Federal Government, its officers or agents, are excluded from the Coastal Zone under the Coastal Zone Management Act (16 U.S.C. § 1453 (1));

Please remember that CCDs must be submitted only when your project has a reasonably foreseeable effect on **MD's Coastal Zone or state resources**- it may have a reasonably foreseeable effect on your installation and still not require a CCD.

Reasonably foreseeable effects: No clear definition, but has been extrapolated in the NEPA context to mean probable effects even though those probable effects are uncertain (see CEQ 40 FAQs, question 18).

WHEREAS, the State of Maryland first prepared its Coastal Zone Management Program in 1978 and, on November 19, 2010, submitted a Routine Program Change updating its Coastal Zone Management Program to the National Oceanic and Atmospheric Administration for approval. This Routine Program Change, approved by National Oceanic and Atmospheric Administration on March 18, 2011, updates, clarifies, and improves access to Maryland's Enforceable Coastal Policies;

WHEREAS, the Department of Defense participated in the public review of Maryland's November 2010 Routine Program Change, and this participation led to a series of discussions between the Parties and the National Oceanic and Atmospheric Administration Office of Ocean and Coastal Resource Management in which several agreements and understandings were reached on the application of Maryland's Coastal Zone Management Program to Department of Defense activities;

AND, WHEREAS, the parties agreed to reduce those agreements and understandings to writing;

NOW THEREFORE, the Parties agree as follows:

Article I: General

Section 1.01 Terminology: As used throughout this document, "Department of Defense" means components, subordinate services, commands, and installations and not necessarily Cabinet-level activities. Also as used throughout this document, "Policies" refers to Maryland's Enforceable Coastal Policies, effective April 8, 2011 and implemented pursuant to Maryland's Coastal Zone Management Program. "Policy" refers to a specific Maryland Enforceable Coastal Policy.

Section 1.02 State Permits: In general, the obligation of the Department of Defense under the Coastal Zone Management Act is to demonstrate consistency to the maximum extent practicable with the substantive requirements identified in Maryland's Enforceable Coastal Policies. Unless otherwise required under Federal law, the Department of Defense is not required to obtain State permits or comply with any specific State procedural requirements to demonstrate consistency with Maryland's Enforceable Coastal Policies. The Department of Defense may, at its discretion, take advantage of an existing State permitting process or existing State procedural requirement if it determines these processes or requirements are the most convenient and efficient way of demonstrating consistency. The act of the Department of Defense submitting a permit application in such cases does not expand the jurisdiction of any State agency over Department of Defense activities.

Section 1.03 Early Coordination: Prior to providing a consistency determination, the Department of Defense should confer with relevant Maryland agencies early in the planning process on the nature and expected complexity of planned Department of Defense projects and activities. Attachment 1 is appended hereto and lists the Maryland Federal Coastal Consistency

Review Points of Contact. The Department of Defense welcomes Maryland's assistance in determining which Policies are applicable to a given project or activity and developing strategies for achieving and demonstrating consistency with those Policies. At the earliest possible time, Maryland shall notify the Department of Defense of an action that the Department of Defense has not provided a consistency determination for, but which may have a reasonably foreseeable effect on Maryland's Coastal Zone.

Section 1.04 List of *de minimis* and Environmentally Beneficial Activities and General Consistency Determinations: The Department of Defense and Maryland agree to work together to develop a list of *de minimis* activities and a list of environmentally beneficial activities, as these terms are defined in 15 C.F.R. § 930.33. The List of *de minimis* and Environmentally Beneficial Activities will be appended hereto as Attachment 2 following completion of the procedures outlined in 15 C.F.R. § 930.33. Absent unusual circumstances, the projects and activities on these lists will require no individual consistency determination. Either Party may recommend revisions to this list at any time. Projects and activities can be added to this list with the agreement of both Parties through the process under 15 C.F.R. §930.33. Either Party can modify or remove an item from this list in accordance with Section 3.03 of this Memorandum of Understanding.

Section 1.05 Federal Consistency Determination Process: In accordance with 15 C.F.R. § 930.33(a), the Department of Defense shall determine which of its activities affect coastal uses or resources. For Federal agency projects and activities that have reasonably foreseeable effects on any coastal use or coastal resource on Maryland's Coastal Zone, the Department of Defense will submit a consistency determination in accordance with 15 C.F.R. § 930 et seq, identifying the relevant Maryland Enforceable Coastal Policies and demonstrating the consistency of the project or activity with those Policies. Attachments 1, 3 and 4 contain the Federal consistency submission and approval process.

Section 1.06 Exceptions: Any time the circumstances of a particular project or activity that would otherwise fall under Attachment 2 indicate that there may be adverse coastal effects, the Department of Defense will prepare and submit a Federal Coastal Consistency Determination for that individual project or activity.

Section 1.07 Options for Demonstrating Consistency: The Department of Defense and Maryland agree that Integrated Natural Resources Management Plans ("INRMPs") or consultation with Maryland may be appropriate options for demonstrating consistency. Consulting with Maryland or implementing an INRMP does not however relieve the Department of Defense of its obligation to submit a written consistency determination when required by the Coastal Zone Management Act. Rather, the Department of Defense may, where appropriate, point to relevant provisions of an INRMP or consultation with Maryland in a written consistency determination to demonstrate consistency with certain Maryland Enforceable Coastal Policies. Additionally, the Department of Defense may, at its discretion, utilize Maryland's administrative processes,

15 CFR 930.11: Effects include direct and indirect effects on environment and coastal uses. Triggering permit threshold does not necessarily trigger CZMA. Look to Attachment 3.

including but not limited to permits, to assist in demonstrating consistency with the substantive requirements of Maryland's Enforceable Coastal Policies. When resources are available and environmental benefits will accrue, the Department of Defense may, at its discretion and with Maryland concurrence, perform mitigation above and beyond that required to demonstrate consistency. These additional mitigation measures will be documented by the Department of Defense and Maryland, and may be used to meet mitigation requirements for future Department of Defense projects and activities.

Section 1.08 Mapping / Alternative Sites - Oyster Reefs, Trout Waters and Colonial Bird Nesting Sites: To address potential impacts to specific habitats that would have reasonably foreseeable effects to coastal uses or resources of Maryland and to provide greater specificity to the application of the policies, Maryland is creating a coastal atlas which will delineate the geographic areas of significance referred to in Maryland's Enforceable Coastal Policies B.1.1, B.2.1 and B.6.5. Maryland will make the coastal atlas available to the Department of Defense and the general public. The Department of Defense may share with Maryland any information previously collected and included in the INRMP that the State could use in creating the coastal atlas.

Article II. Specific Maryland Enforceable Coastal Policies for the Purpose of Federal Consistency Determinations:

Section 2.01 General Policies: Core Policies (Noise): The Department of Defense will demonstrate consistency with this Policy for new activities having a reasonably foreseeable effect on the Coastal Zone, other than aircraft operations. Compliance with internal Department of Defense and military service component noise abatement policies will be sufficient to demonstrate consistency with this Policy for such projects.

Section 2.02 General Policies: Water Quality (Pesticide Storage): The Department of Defense will demonstrate consistency with Maryland's Enforceable Coastal Policies regarding pesticide storage through compliance with Department of Defense Instruction 4150.07, "DoD Pest Management Program".

Section 2.03 General Policies: Water Quality (Toxic Discharges): The Department of Defense will continue to demonstrate consistency with this Policy by applying for and complying with permits required under the Clean Water Act and the relevant section of the Code of Maryland Regulations, currently 26.08.03.01.

Section 2.04 General Policies: Flood Hazards: The Department of Defense and Maryland agree that Policy A.3.2 does not establish absolute prohibitions against development on Department of Defense lands by Federal agencies.

Section 2.05 Coastal Resources: The Chesapeake and Atlantic Coastal Bays Critical Area: The Department of Defense and Maryland agree to continue discussing appropriate measures to demonstrate consistency with Maryland's Enforceable Coastal Policies related to the Chesapeake Bay and Atlantic Coastal Bays Critical Areas, including the development and maintenance of a List of *de minimis* and Environmentally Beneficial Activities, addressed in Section 1.04.

Section 2.06 Coastal Resources: Tidal and Non-Tidal Wetlands: The Department of Defense will consult with Maryland to ensure projects that may alter wetlands are consistent to the maximum extent practicable with the intent of this Policy. Maryland and the Department of Defense recognize that wetland impacts may be unavoidable due to mission requirements. In instances where adverse wetland impacts cannot be avoided, the Department of Defense and Maryland will work together to ensure any adverse effects to the Maryland Coastal Zone are minimized, any environmental benefits are maximized, and Department of Defense's operational flexibility is maximized. By submitting a Joint Permit Application under Clean Water Act Sections 404/401 to the appropriate regulatory agencies, the Department of Defense demonstrates consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Section 2.07 Coastal Resources: Forests: The Department of Defense will demonstrate consistency with the underlying conservation goals of the Forest Conservation Act as embodied in Maryland's Enforceable Coastal Policies to the maximum extent practicable. An installation's INRMP may be sufficient for this purpose. **For land-disturbing activities of 40,000 square feet or greater occurring on an installation, the Department of Defense will submit to Maryland either a negative determination with a finding of no effect to coastal uses or resources, or a consistency determination.** If the Department of Defense proposes an action that will have reasonably foreseeable effects on uses or resources of Maryland's Coastal Zone, then the Department of Defense must be consistent to the maximum extent practicable with the substantive provisions of the Forest Conservation Act related to the reasonably foreseeable effects. The Department of Defense is not required to meet the procedural requirements of the Forest Conservation Act, such as creating and submitting forest conservation plans, forest stand delineation plans, or Long-Term Protective Agreements to Maryland. Likewise, the Department of Defense may not contribute to the State Forest Conservation Fund. However, the Department of Defense may, at its discretion and consistent with Federal fiscal legal requirements, follow Maryland's administrative process to assist in demonstrating consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Section 2.08 Coastal Resources: Historical and Archaeological Sites: The Department of Defense will continue to use procedures in accordance with the requirements of the National Historic Preservation Act that are consistent with Maryland's Historical Preservation Program.

✓ Maryland agrees that meeting the consultation requirements under the National Historic

Yes, a CCD or negative determination must be submitted for all projects affecting 40,000 sq ft or greater. IF there are reasonably foreseeable effects to MD's CZ, installations are required to comply with the substantive provisions of the FCA to the max extent practicable but only as related to the reasonably foreseeable effects. Please see NOAA memo to MD dtd 2004, included herein. Note: Timber sales are treated differently.

Preservation Act is sufficient to demonstrate consistency with Policies relating to historic preservation. In the event a tidal shore erosion project affects historical or archaeological resources, the Department of Defense will continue to use the consultation procedures under the National Historic Preservation Act that are consistent with Maryland's Historic Preservation Program.

Section 2.09 Coastal Resources: Living Aquatic Resources: Each INRMP maintains a relevant and updated baseline list of plant and animal species located at each installation for all pertinent taxonomic and regionally important groups, and may include State-listed endangered and threatened species. INRMPs are prepared, maintained, and implemented for all installations and ranges that contain significant natural resources for which the Department of Defense has authority for, or control of, natural resources management pursuant to the Sikes Act, 16 U.S.C. § 670 et seq. Maryland will continue to participate in the development and review of all INRMPs. Each Department of Defense component should ensure, to the extent practicable, that current and planned installation programs, plans, and projects that affect natural resources are integrated and compatible with INRMPs. Each INRMP requires that biologically or geographically significant or sensitive natural resources, such as ecosystems or species, are monitored and managed for their protection and long-term sustainability. The INRMP reflects the mutual agreement between Maryland Department of Natural Resources, the United States Fish and Wildlife Service and the Department of Defense concerning conservation, protection, and management of fish and wildlife resources, and it may be used to demonstrate consistency with Maryland's Enforceable Coastal Policies. If there are reasonably foreseeable effects on living aquatic resources as described in Maryland's Enforceable Coastal Policies, the Department of Defense and Maryland will work together to ensure any adverse effects are minimized, any environmental benefits are maximized, and the Department of Defense's operational flexibility is maximized.

Section 2.10 Coastal Uses: Tidal Shore Erosion Control (Living Shoreline): When, after consultation with Maryland, the Department of Defense determines that mission requirements or safety may be threatened by wildlife attracted to living shoreline habitats, less preferred alternatives for shoreline stabilization, such as hardened structures, should be considered consistent to the maximum extent practicable with this Policy. By submitting a Joint Permit Application under Clean Water Act Sections 404/401 to the appropriate regulatory agencies, the Department of Defense demonstrates consistency with the substantive requirements of Maryland's Enforceable Coastal Policies.

Article III. General Statements of Understanding

Section 3.01 Effective Date: This Memorandum of Understanding shall be effective as of the date of the last signature shown below and shall not expire.

Section 3.02 Pursuant to the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1342, this Memorandum of Understanding makes no commitments of funds. Nothing in this Memorandum

of Understanding will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury.

Section 3.03 Amendment and Termination: This Memorandum of Understanding and attachments may be modified or amended upon written request of any Party hereto and the subsequent written concurrence of the other Party. Moreover, this Memorandum of Understanding may be terminated sixty (60) days after providing written notice of such termination to the other Party.

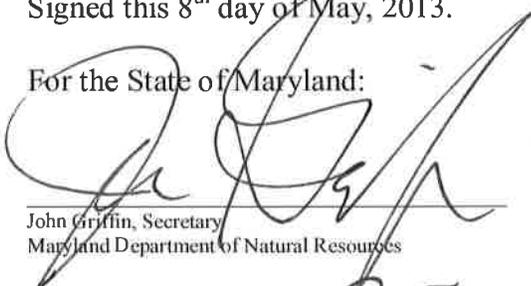
Section 3.04 This Memorandum of Understanding does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or Party against the United States, its agencies, its officers; or against the State of Maryland, its agencies, its officers; or against any other person. This Memorandum of Understanding is to be construed in a manner consistent with all existing laws and regulations.

Section 3.05 This Memorandum of Understanding neither expands nor is in derogation of those powers and authorities vested in the Parties by applicable law, statutes, regulations, or Executive Orders, nor is it intended to modify or supersede any other applicable interagency agreements existing as of the date of this Memorandum of Understanding. The Parties enter into this agreement in good faith and intend to fully carry out the terms of this Memorandum of Understanding.

Section 3.06 The Parties will meet at least every two years to discuss this Memorandum of Understanding and its Attachments.

Signed this 8th day of May, 2013.

For the State of Maryland:



John Griffin, Secretary
Maryland Department of Natural Resources



David Costello, Deputy Secretary
Maryland Department of the Environment

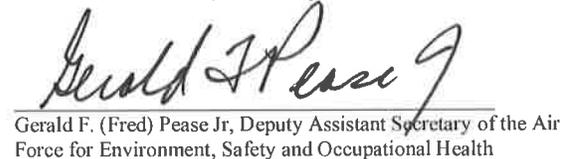
For the U.S. Department of Defense:



Donald R. Schregardus, Deputy Assistant Secretary of the Navy
for Environment



Hershel E. Wolfe, Deputy Assistant Secretary of the Army
for Environment, Safety and Occupational Health



Gerald F. (Fred) Pease Jr, Deputy Assistant Secretary of the Air
Force for Environment, Safety and Occupational Health

Memorandum of Understanding between the State of Maryland and The United States Department of Defense

Attachment 1: Maryland Federal Coastal Consistency Determinations Points of Contact Dated January 9, 2013

All Federal Coastal Consistency Determinations for proposed Department of Defense activities shall be sent to:

Elder Ghigiarelli
Federal Consistency Coordinator
Deputy Program Administrator
Maryland Department of the Environment
Wetlands and Waterways Program
1800 Washington Boulevard, Suite 430
Baltimore, MD 21230-1708
(410) 537-3763
Email: eghigiarelli@mde.State.md.us

Joe Abe
Coastal Policy Coordination Section Chief
Chesapeake and Coastal Service
Maryland Department of Natural Resources
580 Taylor Avenue, E-2
Annapolis, Maryland 21401
(410) 260-8740
Email: jabe@dnr.State.md.us

When the Department of Defense evaluates Maryland's Enforceable Coastal Policies in the following Policy areas, the Federal Coastal Consistency Determination and supporting information must be transmitted to the relevant points of contact concurrent with the submittal to the Maryland Federal Consistency Coordinator. The indicated point of contact should also be included in any early coordination.

(B.1) The Chesapeake and Atlantic Coastal Bays Critical Area

Lisa Hoerger
Regulations Coordinator
Department of Natural Resources
Critical Area Commission for the Chesapeake & Atlantic Coastal Bays
1804 West Street
Suite 100
Annapolis, MD 21401
(410) 260-3478
E-mail: lhoerger@dnr.State.md.us

(B.2) Tidal Wetlands

Rick Ayella
Division Chief
Maryland Department of the Environment
Tidal Wetlands Division – Baltimore Office
1800 Washington Boulevard
Baltimore, MD 21230-1718
(410) 537-3835
Email: rayella@mde.State.md.us

(B.3) Non-Tidal Wetlands

Amanda Sigillito
Division Chief
Maryland Department of the Environment
Nontidal Wetlands and Waterways Division
1800 Washington Boulevard
Baltimore, MD 21230-1718
(410) 537-3766
Email: asigillito@mde.State.md.us

(B.4) Forests

Marian Honeczy
Supervisor of Urban Programs & FCA Coordinator
Department of Natural Resources
Forest Service
Tawes State Office Building E1
580 Taylor Avenue
Annapolis, MD 21401-2397
(410) 260-8511
E-mail: mhoneyzy@dnr.State.md.us

(B.5) Historical and Archeological Sites

Elizabeth J. Cole
Administrator, Review & Compliance
Department of Planning
Maryland Historical Trust - Crownsville Office
100 Community Place
Crownsville, MD 21032-2023
(410) 514-7631
bcole@mdp.State.md.us

(B.6) Living Aquatic Resources

Catherine McCall
Assistant Director
Coastal and Marine Assessment
Maryland Department of Natural Resources
580 Taylor Avenue, E-2
Annapolis, MD 21401
(410) 260-8737
Email: cmccall@dnr.State.md.us

Memorandum of Understanding between the State of Maryland and The United States Department of Defense

Attachment 2: List of *de minimis* and Environmentally Beneficial Activities

This process is for Federal consistency purposes pursuant to the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) only and in no way relieves the United States Department of Defense (hereinafter “DoD”) from any other applicable Federal, State, or local laws, regulations or other requirements.

Section I contains a list of Federal agency activities (hereinafter “activities”) that typically have minor or *de minimis* effects on coastal uses and resources in the Maryland Coastal Zone. *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.

Section II contains environmentally beneficial activities that have beneficial impacts on the natural resources of Maryland’s Coastal Zone. “Environmentally beneficial activities” means an activity or activities that protect, preserve, or restore the natural resources of the Coastal Zone.

Upon approval by Maryland in accordance with 15 C.F.R. § 930.33(a)(3) or 15 C.F.R. § 930.36(c), DoD may generally carry out these activities without submitting a negative Federal Coastal Consistency Determination unless the circumstances of a particular Federal Development Project (hereinafter “Project”) or activity indicate that the activity will have a greater than *de minimis* adverse effect on coastal uses or resources. In determining whether a particular activity qualifies as *de minimis* or as having an environmentally beneficial impact, each Project or activity should be evaluated individually, taking into account the cumulative effects of all previous, current, and planned activities on and around the installation and the proximity of the Project or activity to any coastal uses or resources. For an activity to be considered *de minimis*, wetland impacts shall be limited to 5,000 square feet or less. Land disturbing activities that include grubbing may require further assessment.

Best management practices (“BMPs”) will be implemented for each activity to protect water quality, coastal uses, and coastal resources. For the list of *de minimis* or environmentally beneficial activities, BMPs are defined as resource management decisions that are based on the latest professional and technical standards for the protection, enhancement, and rehabilitation of natural resources. BMPs include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures, and control practices. (*Department of Defense Instruction, Number 4715.03, “Natural Resources Conservation Program”, March 18, 2011*)

- I. Examples of *de minimis* Activities: Pursuant to 15 C.F.R. § 930.33(a)(3)(i), the list of *de minimis* activities identifies those activities not subject to further State agency review for Federal consistency in accordance with the Coastal Zone Management Act.
 - a. Existing buildings, facilities or structures: The following list of projects on existing buildings or structures are considered *de minimis* so long as the building or structure

is not eligible for listing on the National Register of Historic Places. If the structure is determined eligible for listing, the Project must have been determined by the appropriate cultural resources manager to have no adverse effect on the building or structure.

1. Exterior painting, staining or sealing of existing building/infrastructure
2. Brick repointing
3. Repair but not replacement of building foundations
4. Repair and replacement of roofs, windows, scuppers, gutters, or snow guards
5. HVAC modernization to include a new pad in the same footprint as the current pad so long as the new pad is not larger than the current pad
6. Water softener restoration
7. Repair and replacement of sump pump(s)
8. Repair and replacement of exterior door(s)
9. Installation, repair, and maintenance of solar panel(s) and wall(s) taking place within or upon existing structures or existing impervious surface area(s)
10. Exclusively external structural and cosmetic alterations to existing buildings or structures as long as any ground disturbance is within the same foot print (e.g., installation of a canopy that is harmonious and compatible with the appearance and character of the existing building and does not contribute to additional stormwater pollution)

b. Road Maintenance and Parking Maintenance (within the same footprint or less):

1. Routine repairs including but not limited to milling, grooving, stripping, repairing (patching or slurry seal), striping, or resurfacing that does not result in a net increase in stormwater discharge
2. Barrier skirt and pop up barrier maintenance and repair

c. Grounds Maintenance:

1. Grading and sodding of existing athletic and parade fields
2. Routine grounds maintenance, including but not limited to mowing existing mowed areas; seeding/reseeding; planting and replacement of flowers, trees and shrubs; and hiking trail maintenance
3. Maintenance of vegetation within existing firebreaks, airfield/radar clear zones, airfield imaginary surfaces, firing lines, lines of sight, ranges, anti-terrorism/force protection fence lines, and building clearance requirements not involving grubbing or other excavation
4. Maintenance and in-kind replacement of existing fencing

d. Utilities:

1. Repair and in-kind replacement of underground utility lines (such as fiber optic, water, and electric lines)
2. Maintenance of vegetation within existing utility clearance zones, rights-of-way and easements that does not involve grubbing or other excavation
3. Utility line maintenance and repair including but not limited to maintenance and repair of sewer lines, steam lines, gas lines, fire mains, and water lines
4. Cleaning of storm drain inlets and swales
5. Repair and maintenance of existing piping under roads and culverts
6. Maintenance and repair of aboveground storage tanks, underground storage tanks, and fuel lines
7. Studies (such as archeological investigations, periodic sampling, and geotechnical studies) for utility projects that require excavation but do not exceed 5,000 square feet of land disturbance and does not include grubbing
8. Maintenance, repair, and replacement of streetlights
9. Cleaning, maintenance, repair, and replacement of the following facilities and devices, to include removal of vegetation, including trees and shrubs, without grubbing or excavation, when other State or Federal permits are not required:
 - a. Existing drainage facilities,
 - b. Stormwater management devices, and
 - c. Water quality facilities and devices
10. Roadside ditch regrading
11. Retrofit and redesign of existing drainage facilities that use environmental site design to the maximum extent practicable
12. In-kind replacement, reconstruction, repair, and modification of existing lighting, guardrails, traffic and pedestrian signals, curbs and gutters, sidewalks and ramps, variable message signs, and Americans with Disabilities Act compliant retrofits
13. Maintenance, repair, and replacement of existing railroad structures

e. Military Operations and Training: Activities described in this section shall be 5,000 square feet or less of new land disturbance.

1. Installation of temporary metal plates, target poles, and targets and maintenance and replacement of catch boxes on existing ranges
2. Temporary placement and use of simulated target fields (e.g., inert mines, simulated mines, or passive hydrophones) in fresh, estuarine,

and marine waters for the purpose of non-explosive research, development, test, and evaluation

3. Short term increases in air operations up to 50 percent of the typical operation rate, or increases of 50 operations per day, whichever is greater
4. Routine testing and evaluation of military equipment on a military reservation or an established range, restricted area, or operating area; similar in type, intensity and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where a DoD agency was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment
5. Routine military training associated with transits, maneuvering, safety and engineering drills, replenishments, flight operations, and weapons systems conducted at the unit or minor exercise level; similar in type, intensity and setting, including physical location and time of year, to other actions for which it has been determined, through NEPA analysis where a DoD agency was a lead or cooperating agency, that there are no significant impacts; and conducted in accordance with all applicable standard operating procedures protective of the environment.

f. Miscellaneous:

1. Preliminary engineering and technical studies
2. Non-invasive inspections, educational programs, and environmental surveys
3. Normal agricultural operations performed as part of an agricultural out-lease contract as described in the installation's approved Integrated Natural Resources Management Plan (hereinafter "INRMP")
4. Recreational hunting and fishing programs and routine fish and wildlife habitat management projects as described in the installation's approved INRMP
5. Prescribed burning for purposes of natural resources management, maintaining military operations, and wildfire prevention as described in the installation's approved INRMP
6. Installation, maintenance, repair, and replacement of signage that does not significantly affect coastal resources
7. Renewal of existing lease agreements, licenses, and easements under the same or nearly the same conditions that existed prior to renewal
8. Hosting or participating in military ceremonies and public events such as air shows, open houses, Earth Day events, National Public Lands Day events, conferences, concerts, and athletic events where no permanent changes to installation infrastructure are required to accommodate all aspects of the event

9. Routine movement, handling, and distribution of materials, including hazardous materials and wastes, that are moved, handled, or distributed in accordance with existing, applicable regulatory requirements and permits
10. Transfer of real property from DoD to another Federal agency
11. Receipt of real property from another Federal agency when there is no anticipated or proposed substantial change in land use
12. Disposal of excess easement interests to the underlying fee owner where the easement is not part of an existing DoD environmental impact mitigation measure
13. Relocation of personnel into existing Federally-owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure (e.g., no increase in vehicular traffic beyond the capacity of the existing road network to support such an increase)
14. Installation of devices to protect human or animal life (e.g., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry into hazardous areas)

II. Environmentally Beneficial Activities: Pursuant to 15 C.F.R. § 930.33(a)(4), the list of environmentally beneficial activities are excluded from further State agency consistency review.

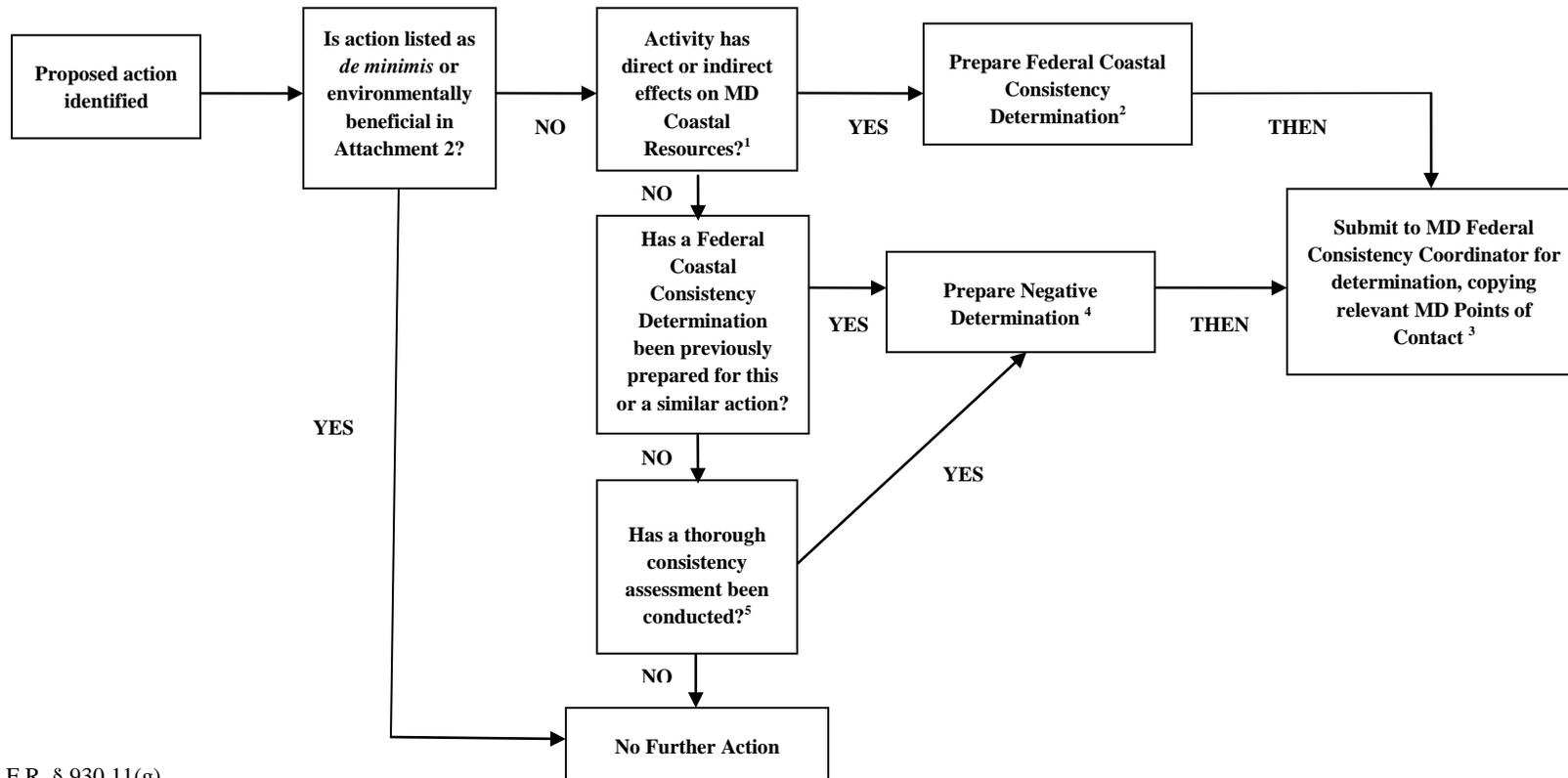
- a. The following activities are considered beneficial, and are not primarily for the purpose and benefit of stormwater BMPs or mitigation as a result of a permitted activity:
 1. Stand alone low-impact development retrofit or enhancement activities including but not limited to:
 - a. Replacement of impervious surface with permeable materials or any form of low impact development design
 - b. Stormwater retrofits
 - c. Demolition, disposal, or improvement of National Register of Historic Places ineligible structures or infrastructure that includes Maryland-approved sediment/erosion control measures and results in reduced impervious surface or increased ecosystem service providing vegetation.
 - d. Construction and installation of grass swales
 - e. Installation, maintenance, repair, and replacement of rain barrels, dry wells, and cisterns to manage stormwater runoff from existing structures
 - f. Installation, maintenance, and repair of green roof
 2. Vegetative invasive species removal pursuant to the installation's approved INRMP

3. Reintroduction of endemic or native species (other than endangered or threatened species) into their historic habitat where no substantial site preparation is involved
4. Existing living shoreline restoration, maintenance and repair so long as any coastal disturbance is returned to its pre-disturbance condition. During staging operations, BMPs will be applied
5. Wetland creation and enhancement that does not involve excavation or clearing of forested buffers
6. Forest enhancement (clearing and replanting) in accordance with the installation's approved INRMP
7. Silviculture in accordance with the installation's approved INRMP
8. Implementation of an Urban Forest Management Plan in accordance with the installation's approved INRMP
9. Replacement of aboveground utilities with underground utilities using directional drilling and avoiding coastal uses and resources

15 C.F.R. 930.11(b) *Any coastal use or resource*. The phrase "any coastal use or resource" means any land or water use or natural resources of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

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Attachment 3: Federal Consistency Review Flow Chart



¹15 C.F.R. § 930.11(g)

²See Contents of Federal Coastal Consistency Determinations (Attachment 4) for a consistency determination template. Federal Coastal Consistency Determinations shall indicate whether such proposed activities will be undertaken in a manner consistent to the maximum extent practicable with Maryland’s Enforceable Coastal Policies. See 15 C.F.R. § 930.32.

³See Maryland Federal Consistency Review Points of Contact (Attachment 1). The Maryland Federal Consistency Coordinator shall inform the DoD-identified point of contact of Maryland’s concurrence with, or objection to, the DoD’s consistency determination at the earliest practicable time, after providing for public participation in Maryland’s review of the consistency determination. DoD may presume Maryland’s concurrence if Maryland’s response is not received within 60 days from the receipt of the DoD’s consistency determination and supporting information. According to 15 C.F.R. § 930.41(a), the 60 day review period begins when the Maryland Federal Consistency Coordinator receives the consistency determination and supporting information required by 15 C.F.R. § 930.39(a).

⁴In accordance with 15 C.F.R. § 930.35, the DoD shall provide the negative determination to the Maryland Federal Consistency Coordinator and relevant points of contact, listed in Attachment 4, at least 90 days before final approval of the DoD activity. Maryland has 60 days to respond, and may request an extension of up to 15 days. The Maryland Federal Consistency Coordinator is not obligated to respond to a negative determination. If the Maryland Federal Consistency Coordinator does not respond to the DoD’s negative determination within 60 days, Maryland Federal Consistency Coordinator concurrence with the negative determination shall be presumed. See 15 C.F.R. § 930.35(c) for guidance on how to proceed should Maryland object to the negative determination.

⁵An EA or EIS prepared pursuant to NEPA which evaluates effects to coastal uses or resources is a thorough consistency assessment triggering the requirement to prepare a Negative Determination. However, in cases where the activity is on the List of *de minimis* and Environmentally Beneficial Activities, a Negative Determination would not be required.

Memorandum of Understanding between the State of Maryland and The United States Department of Defense

Attachment 4: Contents of Federal Coastal Consistency Determinations

Federal Coastal Consistency Determinations shall generally conform to the following format, when appropriate:

1. Enclosure 1: Proposed Project Description
 - a. Project Location
 - b. Project Description
 - c. Public Participation Section
 - d. Other Consultations (e.g., National Historic Preservation Act Section 106 Consultations)
2. Enclosure 2: Site Location
 - a. Site Location Map
 - b. Photographs
3. Enclosure 3: Basis of Determination: Each affected and unaffected Enforceable Coastal Policy should be addressed as relevant or not relevant in the Federal Coastal Consistency Determination.
 - a. General Policies
 - i. Core Policies
 - ii. Water Quality
 - iii. Flood Hazards
 - b. Coastal Resources
 - i. Chesapeake and Atlantic Coastal Bays Critical Area
 - ii. Tidal Wetlands
 - iii. Nontidal Wetlands

- iv. Forests
- v. Historic and Archaeological Sites
- vi. Living Aquatic Resources
- c. Coastal Uses
 - i. Mineral Extraction
 - ii. Electrical Generation and Transmission
 - iii. Tidal Shore Erosion Control
 - iv. Oil and Natural Gas Facilities
 - v. Dredging and Disposal of Dredged Material
 - vi. Navigation
 - vii. Transportation
 - viii. Agriculture
 - ix. Development
 - x. Sewage Treatment



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

Mr. Kerry Kehoe
Coastal Program Manager
Coastal Zone Management Division, E-2
Maryland Department of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

DEC 7 2004

Dear Mr. Kehoe:

Thank you for your letter dated September 8, 2004, requesting that certain statutes and regulations for forest conservation be incorporated into the Maryland Coastal Management Program (MCMP), and providing notice of changes pursuant to Clean Water Act requirements. You requested that the forest conservation changes be incorporated as routine program changes (RPCs), pursuant to the Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H and the Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance of July 1996.

After analyzing your submittal, we have concluded that the submitted provisions of the Forest Conservation Act (FCA), its associated regulations, and the Reforestation Act (RFA), as listed below, are RPCs and OCRM approves them as enforceable policies of the MCMP. Federal consistency shall apply to the approved forest conservation changes once you publish notice of this approval, pursuant to 15 C.F.R. § 923.84(b)(4). Please provide this office with a copy of the public notice.

FOREST CONSERVATION

Maryland Code, Natural Resources, Title 5: Forests and Parks

Subtitle 1, Section 3: Reforestation

Section added: 103(b).

Subtitle 16: Forest Conservation

Sections added: 1601; 1602; 1604 – 1607; 1608(a), (b) and (c); 1610(b); 1610.1; 1611(b); and 1612(a), (b), (c) and (d).

Code of Maryland Regulations, Title 8, Subtitle 19: Forest Conservation

Sections added: 01.03 - 01.05; 04.01 – 04.05; 04.07; 04.08; 04.14; 05.01; 05.02; 06.03

Furthermore, pursuant to CZMA section 307(f), and OCRM's 1996 Program Change Guidance, the Department of Natural Resources submitted for incorporation into the MCMP, the following statutes and implementing regulations:



OIL POLLUTION MANAGEMENT PROGRAM**Maryland Code, Environment, Title 4: Water Management****Subtitle 4: Water Pollution Control and Abatement**

Sections added: 401; 405; 407 – 411; 411.1; 412; 413; 415 – 418.

Code of Maryland Regulations, Title 26, Subtitle 10: Oil Pollution and Tank Management

Sections added: 01.01 – 01.06; 01.08 – 01.12; 01.16 – 01.18; 01.20 – 01.24; 02.01; 02.02; 02.04 – 02.06; 03.01 – 03.09; 04.01 – 04.05; 05.01 – 05.04; 05.06; 06.01 – 06.09; 07.01; 08.01 – 08.04; 09.01 – 09.08; 10.01 – 10.05; 11.01.

STORMWATER MANAGEMENT PROGRAM**Maryland Code, Environment, Title 4: Water Management****Subtitle 2: Stormwater Management**

Sections added: 202; 204 – 206; 215.

Code of Maryland Regulations, Title 26, Subtitle 17: Water Management

Sections added: 02.02; 02.03(c); 02.04 – 02.11.

MARINE SANITATION DEVICES**Maryland Code, Natural Resources, Title 8: Waters****Subtitle 7: State Boat Act**

Section added: 741.

OCRM concurs that the listed sections of these three programs were developed pursuant to Clean Water Act requirements and are part of the MCMP under CZMA section 307(f). The state published public notices and sent notices to federal, state, and local agencies and to other interested parties regarding incorporation of these provisions into the MCMP. Therefore, federal consistency shall apply to the listed sections of the Oil Pollution Management Program, Stormwater Management Program, and Marine Sanitation Devices.

The Department of the Navy submitted comments to OCRM concurring with the state's submission, except for inclusion of the forest conservation and reforestation statutes and regulations. The Navy contends that these are substantial changes to the MCMP and should be "amendments" rather than RPCs. Letter from Dominick G. Yacono, Navy, to Randall Schneider, OCRM (Oct. 28, 2004). The Navy based its assertion, in large part, on the potential conflict of imposing state requirements for "Forest Stand Delineation Plans" (FSDPs) and "Forest Conservation Plans" (FCPs) on federal lands. After discussions with the Navy, OCRM finds that the apparent conflict involving the FCA's definition of "person" and state requirements for FSDPs and FCPs do not present a conflict as a practical matter.

The state may require a FSDP, FCP and/or, pursuant to MD. REGS. CODE § 08.19.05.02, a Long-Term Protective Agreement for activities within state jurisdiction. However, under the federal supremacy clause of the U.S. Constitution, federal agencies are not subject to state regulation and states may not require federal agencies to obtain state permits, or to comply with other similar state regulatory requirements, such as FSDPs, FCPs, or Long-Term Protective

Agreements, for activities on federal lands unless authorized by federal law. *See* U.S. CONST. art. VI, cl. 2. The CZMA does not authorize the state to regulate federal agencies or federal lands. Furthermore, federal property is "federally excluded land" under the CZMA, and thus not subject to state regulation. *See* 16 U.S.C. § 1453(1); 15 C.F.R. § 923.33. State policies must only apply to areas of state jurisdiction and must be legally binding under state law. *See* 16 U.S.C. § 1453(6a). A state law that would regulate federal agencies or federal lands cannot be an enforceable policy under the CZMA. Therefore, unless federal law, other than the CZMA, requires a federal agency to comply with the FCA, the state cannot require a federal agency to submit FSDPs, FCPs, or Long-Term Protective Agreements for activities on federal lands.

Despite the exclusion of federal lands from state regulation under the CZMA, federal agencies must comply with the federal consistency requirements of CZMA section 307 and NOAA's regulations, 15 C.F.R. part 930. In the context of the FCA and RFA, if a federal agency proposes an action that will have reasonably foreseeable effects on uses or resources of the state's coastal zone, then the federal agency must be consistent to the maximum extent practicable with the substantive provisions in the FCA, RFA and state regulations related to the reasonably foreseeable effects. *See* 15 C.F.R. § 930.32. This would include being consistent to the maximum extent practicable with the enforceable standards under the regulatory jurisdiction of the state. However, the federal agency would not have to develop FSDPs, FCPs, or Long-Term Protective Agreements for the reasons stated above. The federal agency is required to provide the information in 15 C.F.R. § 930.39 and may provide it to the state in any manner it chooses so long as the requirements of § 930.39 are met. Therefore, because a state cannot, through the CZMA, regulate federal lands, and because 15 C.F.R. § 930.39 sets forth the only applicable information requirements, federal agencies are not required to submit a FSDP or FCP, or enter into a Long-Term Protective Agreement.

Unless there is specific federal statutory authority requiring federal agencies to obtain a state permit, OCRM will not approve a state law or regulation that seeks to apply the state regulatory authority to federal agencies or to federal land or waters. However, even though the definition of the term "person" in FCA section 5-1601(dd) and use of the term "person" throughout the FCA includes the federal government, OCRM finds the inclusion of the FCA in the MCMP approvable. Despite the intent of the state legislature to include the federal government in the definition of "person," the federal government is not required to apply for state subdivision plans or grading and sediment control permits. Therefore, inclusion of the federal government in the definition of a person under the FCA has no effect. OCRM strongly encourages the state to make a technical amendment to the FCA to remove the federal government from the definition for clarity.

OCRM also notes that the FCA is limited to "any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State, or local government on areas 40,000 square feet or greater." MD. CODE ANN., NAT. RES. § 5-1602. Since the federal government is not required to submit or apply for subdivision plan approval or a grading or sediment control permit, the use of the defined term person has no effect on federal entities.

Unlike the FCA, the RFA uses the term "person" but does not define the term or otherwise mention the federal government. Therefore, the federal government is not included as a "person" in the RFA.

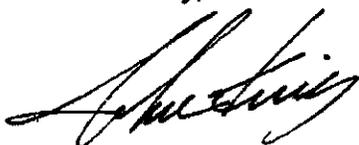
The state's forest conservation regulations also use the term "person," but do not define the term. MD. REGS. CODE §§ 08.19.01.01 to 08.19.06.03. The regulations do use the term "applicant," which says:

- (3) "Applicant" means a person who:
 - (a) Is applying for:
 - (i) Subdivision approval,
 - (ii) A grading or sediment control permit, or
 - (iii) Project plan approval if the applicant is a State or local agency;or
 - (b) Has received approval of a forest stand delineation or forest conservation plan.

This definition of "applicant" does not include the federal government and therefore should guide how the state applies the FCA and RFA. In addition to removing the term "federal government" from the FCA definition, OCRM also recommends that the state define the term "person" as used in the RFA and bring the Forest Conservation regulations into conformity by defining "person" in such a way as to exclude the federal government.

Should you have any questions, please call Randall Schneider at (301) 713-3155, extension 210.

Sincerely,



John King, Chief
Coastal Programs Division

cc: Randall Schneider
Dominick G. Yacono, Navy