



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 4, 2021

County Commissioners of Worcester County Maryland
Attn: Scott Hardaway, Coastal Design
P.O.Box 157
Achilles, VA 23001

Via email: scott@coastaldesignnpc.com

Re: Agency Interest Number: 168426
Tracking Number: 202060802
Tidal Authorization Number: 20-WQC-0041

Dear Mr. Perlozzo:

Your project did not qualify for approval under the Maryland State Programmatic General Permit (MDSPGP); therefore, a separate review and issuance of the federal permit will be required by the U.S. Army Corps of Engineers. The federal permit is not attached.

Additionally, your project required a Wetlands License to be approved and issued by the Maryland Board of Public Works (BPW). The Wetlands License will be sent to you by the BPW's Wetlands Administrator.

A project that does not qualify for approval under the MDSPGP requires an individual Water Quality Certification (WQC) to be issued by the Maryland Department of the Environment, which is attached. Please take a moment to read and review your WQC to ensure that you understand the limits of the authorized work and all of the general and special conditions.

You should not begin any work until you have obtained all necessary State, local, and federal authorizations. Please contact Joseph R. Kincaid at joe.kincaid@maryland.gov or (410) 901-4044 with any questions.

Sincerely,

Jonathan Stewart
Eastern Region Chief
Tidal Wetlands Division



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION
WATER QUALITY CERTIFICATION



20-WQC-0041

EFFECTIVE DATE: **February 4, 2021**
CERTIFICATION HOLDER: **County Commissioners of Worcester County Maryland
1 W Market St, Rm 103
Snow Hill, Maryland 21863**
PROJECT LOCATION: **Terminus of Selsey Road
Ocean City, MD 21842
Isle of Wight Bay in Worcester County**

UNDER AUTHORITY OF SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT AND ITS AMENDMENTS AND IN ACCORDANCE WITH §9-313 THROUGH §9-323, INCLUSIVE, OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, THE WATER AND SCIENCE ADMINISTRATION (“ADMINISTRATION”) HAS DETERMINED THAT THE REGULATED ACTIVITY DESCRIBED IN THE REQUEST FOR CERTIFICATION FOR COUNTY COMMISSIONERS OF WORCESTER COUNTY, WILL NOT VIOLATE MARYLAND’S WATER QUALITY STANDARDS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION AND WITH ALL TERMS AND CONDITIONS OF THIS CERTIFICATION.

THIS CERTIFICATION DOES NOT RELIEVE THE APPLICANT OF RESPONSIBILITY FOR OBTAINING ANY OTHER APPROVALS, LICENSES, OR PERMITS IN ACCORDANCE WITH FEDERAL, STATE, OR LOCAL REQUIREMENTS AND DOES NOT AUTHORIZE COMMENCEMENT OF THE PROPOSED PROJECT. A COPY OF THIS REQUIRED CERTIFICATION HAS BEEN SENT TO THE CORPS OF ENGINEERS. THE CERTIFICATION HOLDER SHALL COMPLY WITH THE CONDITIONS LISTED BELOW.

GENERAL CONDITIONS

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

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

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

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

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

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

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

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

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

4. This Certification is valid for the project identified herein and the associated U.S. Army Corps of Engineers authorization until such time that it expires or is not administratively extended.

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

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

SPECIAL CONDITIONS

- A. The Certificate Holder shall construct the marsh establishment area in accordance with the following conditions:
 - a. The Certificate Holder shall use clean substrate fill material, no more than 10% of which shall pass through a standard number 100 sieve.
 - b. The marsh establishment area shall be planted within one year following completion of the filling operation.
 - c. The marsh establishment project shall be maintained as a wetland, with non-nuisance species' aerial coverage of at least 85% for three consecutive years. If 85% coverage is

- not attained, the reasons for failure shall be determined, corrective measures shall be taken, and the area shall be replanted.
- d. If the fill is graded hydraulically, the Certificate Holder shall use a turbidity curtain around the perimeter of the instream work.
 - e. If the existing bank is to be cleared or graded:
 - i. The Certificate Holder shall perform all work under and in accordance with an approved Soil Erosion and Sediment Control Plan from the applicable sediment and erosion control agency; and
 - ii. The Certificate Holder shall perform all work under and in accordance with the Critical Area requirements of the local jurisdiction in the form of an approved Buffer Management Plan.

Statement of Necessity for Condition: The above conditions are required to ensure that waters continue to meet designated uses. Use of fill material exceeding limits or losses exceeding limits may result in discharges which interfere with designated uses, including the support of estuarine and marine aquatic life, and the protection of shellfish harvesting, shallow water submerged aquatic vegetation, and migratory fish spawning and nurseries in tidal wetlands. Limits to fill material and loss limits will maintain the designated use. The discharge or deposition of material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses. Issuance of water quality certification does not relieve the applicant of their responsibility to comply at all times with federal and State law.

Stabilization of the site with vegetation is required to ensure that waters continue to meet designated uses. Loss of substrate fill material may result in discharges which reduce water quality and interfere with designated uses, including the support of estuarine and marine aquatic life, and the protection of shellfish harvesting, shallow water submerged aquatic vegetation, and migratory fish spawning and nurseries in tidal wetlands.

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

- B. The Certificate Holder shall accept the terms of the attached marsh maintenance plan by signing and returning the standard plan to the Water and Science Administration, Tidal Wetlands Division prior to commencement of any work authorized under this Certification. If the Certificate Holder wishes to propose an alternative marsh maintenance plan, the alternative plan must be submitted to and approved by the Tidal Wetlands Division, Water and Science Administration, prior to commencement of any work authorized under this Certification. Any alternative plan must provide assurances of success that are at least equivalent to those of the standard plan, in terms of the extent of native marsh plant coverage, elimination of invasive species and timeframe for plant establishment.

Statement of Necessity for Condition: Stabilization of the site with vegetation is required to ensure that waters continue to meet designated uses. Loss of substrate fill material may result in discharges which reduce water quality and interfere with designated uses, including the support of estuarine and marine aquatic life, and the protection of shellfish harvesting, shallow water submerged aquatic vegetation, and migratory fish spawning and nurseries in tidal wetlands. Loss limits will maintain the designated use.

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

- C. Tidal inlet shall be maintained at the mean high water level to insure tidal exchange from April 1 through October 30 of any year.

Statement of Necessity for Condition: The condition is necessary to ensure adequate flushing of waters to help maintain water quality and prevent lowered dissolved oxygen and increase in bacteria; maintain movement and support of aquatic life; and extent of tidal waters and wetlands and their designated uses for designated uses for growth and propagation of fish, other aquatic life and wildlife and maintain designated uses for support of estuarine and marine aquatic life and shellfish harvesting.

Citations: COMAR 26.08.02.03-3C(8); COMAR 26.08.02.03-3C(1); COMAR 26.08.02.02B(1)(d); 26.08.02.02B(3); 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e)

- D. The Licensee shall obtain a Toxic Materials Permit from MDE by contacting the Industrial Discharge Permits Division at 410-537-3323 prior to the application of any herbicide to eradicate Phragmites. Toxic materials use permits are required for any homeowner, farmer, local government or other person who wants to control aquatic life in ponds, ditches or waterways by the deliberate use of chemical products.

Statement of Necessity for Condition: Discharges of toxic materials in toxic amounts violate water quality standards. Compliance with terms of the MDE Toxic Materials Permit will ensure that the toxic materials are applied in a manner which does not violate water quality standards. The condition is necessary to ensure that the discharge will not interfere with designated uses for growth and propagation of fish, other aquatic life and wildlife and maintain designated uses for support of estuarine and marine aquatic life and shellfish harvesting.

Citations: COMAR 26.08.02.10E(2); COMAR 26.08.02.03-1A; COMAR 26.08.02.03-2F; COMAR 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); 26.08.02.02B(1)(d); 26.08.02.02B(3); COMAR 26.08.02.03B(2); COMAR 26.08.02.03-3C(7); COMAR 26.08.02.03B(5)

- E. Phragmites removal shall be transported to an approved disposal site.

Statement of Necessity for Condition: Phragmites is an invasive plant which spreads and limits the extent of native species habitat for fish, other aquatic life, and wildlife. Discharge and deposition of Phragmites must be in approved areas outside of regulated waters so that the Phragmites will not become re-established in in waters and wetlands and interfere with designated uses for growth and propagation of fish, other aquatic life and wildlife and maintain designated uses for support of estuarine and marine aquatic life and shellfish harvesting.

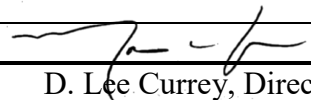
Citations: COMAR 26.08.02.02B(1)(d); 26.08.02.02B(3); 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e)

- F. The approved work area for marsh creation and shoreline protection is authorized as 1,100 linear feet and 105 feet channelward of the mean high water line with an “adaptive” management approach, any additional work outside of the authorized work area will require a modification of this Wetland License.

Statement of Necessity for Condition: Discharges in excess of the approved limits may result in discharges which reduce water quality and interfere with designated uses, including the support of estuarine and marine aquatic life, and the protection of shellfish harvesting, shallow water submerged aquatic vegetation, and migratory fish spawning and nurseries in tidal wetlands. Limits will maintain the designated use.

Citations: COMAR 26.08.02.02B(1)(d); 26.08.02.02B(3); 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e)

CERTIFICATION APPROVED

		2/2/2021	
D. Lee Currey, Director		Date	
Water and Science Administration			

Tracking Number: 202060802

Agency Interest Number: 168426

Effective Date: February 4, 2021

Enclosure: Executed Tidal Wetlands License No.20-0497 with all plans and attachments

cc: WSA Inspection & Compliance Program