

Memorandum of Understanding between the State of Maryland and The United States Department of Defense¹

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*)

¹ Until Maryland concurs and the process described in 15 C.F.R. § 930.33 is complete, the Department of Defense will continue to follow the procedures outlined in 15 C.F.R. § 930.33 et seq.

- 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 under 5,000 square feet 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 Department of Defense 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 Department of Defense 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

