UNITED STATES ARMY GARRISON
ABERDEEN PROVING GROUND/ADELPHI LABORATORY CENTER/
BLOSSOM POINT RESEARCH FACILITY

PROGRAMMATIC FINDING OF NO PRACTICABLE ALTERNATIVE

FOR ARMY ACTIONS OCCURING WITHIN WETLANDS AND 100-YEAR FLOODPLAIN

1. Background.

a. U.S. Army Garrison Aberdeen Proving Ground/Adelphi Laboratory Center/Blossom Point Research Facility, Maryland (APG/ALC/BPRF), (Appendix 1, Figure 1) has prepared a Programmatic Finding of No Practicable Alternative (PFONPA) to assess the effects of routine and ongoing activities that occur on the Installation within the wetlands and 100-year floodplains. The Installations have approximately 11,400 acres of 100-year floodplain and 13,000 acres of wetland, collectively. These actions have been determined to not have the potential to cause significant effects, individually or cumulatively, within these sensitive environmental resources, in accordance with Section 2(a)(2) of Executive Order (EO) 11988 (*Floodplain Management*) and EO 11990 (*Protection of Wetlands*).

b. The Installation, therefore, proposes to enact a PFONPA from which to tier activities that are determined to be routine, on-going, and/or negligibly impactful that occur within wetlands and floodplains on APG/ALC/BPRF, as identified in Section 3 of this document. As actions are proposed and developed via the National Environmental Policy Act (NEPA) project review process, they will be reviewed against the requirements in this PFONPA. If requirements are not met, an individual project-level FONPA will be prepared. This will reduce the amount of time and resources necessary for routine and on-going actions and avoid the administrative burden of preparing individual FONPAs for each action, as presented.

c. Under EO 11988 (*Floodplain Management*), Federal agencies must avoid taking an action in a floodplain unless the head of the agency determines that there is no practicable alternative to siting the proposed action outside the floodplain, and sufficient steps have been taken to minimize potential harm to or within the floodplain. Under EO 11990 (*Protection of Wetlands*), Federal agencies must also avoid undertaking new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to siting such construction outside a wetland and the proposed action includes all practicable measures to minimize harm to wetlands. Further, Federal agencies must provide an opportunity for public review for actions proposed in wetlands and/or 100-year floodplains.

d. APG/ALC/BPRF evaluates all Installation actions to determine whether there are practicable alternatives to performing work within the 100-year floodplain and wetlands via the environmental project review process, which also ensures compliance with all other regulatory requirements. Where no practicable alternatives exist, and impacts are unavoidable, this PFONPA will be referenced in the appropriate environmental review document.

e. Due to the extensive acreage of wetlands and 100-year floodplains on the Installation, it is difficult to find developable land that will not occur some minor impact or encroachment on floodplain and/or wetland areas. Much of the existing built environment is also located within or directly adjacent to these sensitive resources and requires on-going actions such as repair and maintenance to support the mission. Accordingly, the Installation requires many FONPAs, which are a substantial administrative burden on both Installation preparers and higher-level approvers.

2. Study Areas.

a. APG/ALC/BPRF is an Installation Management Command Installation located in Maryland; APG in northeastern Maryland, ALC in central Maryland, and BPRF in southern Maryland.

b. APG (Appendix 1, Figure 2) is recognized as one of the world's most important research and development, testing and evaluation facilities for military weapons and materiel, and supports the finest teams of military and civilian scientists, research engineers, technicians, and administrators.

c. APG occupies approximately 72,283 acres and is located on the western shore of the northern Chesapeake Bay in Maryland. APG also includes several smaller non-contiguous properties in Baltimore, Harford, and Kent Counties, Maryland. Of APG's total 72,283 acres (land and water), 12,695 acres are wetlands, 11,313 acres are 100-year floodplain.

d. ALC is a sub-Installation of APG located in Adelphi, Maryland (Appendix 1, Figure 3). The site straddles the border between Prince George's and Montgomery Counties and is comprised of 207 acres.

e. ALC is home to the Headquarters for the Army Research Laboratory (ARL). ARL is unique because it serves as one of the few Army Laboratories that provides highly advanced, specialized, and one-of-a-kind research facilities.

f. ALC contains four stream corridors; Paint Branch, Hillandale Run (a tributary to Paint Branch), and two unnamed tributaries to Paint Branch. Throughout much of the Installation, steep side slopes restrict the 7 acres of 100-year floodplain of the tributaries and Paint Branch to their narrow stream valleys. There are 11 wetlands on ALC, amounting to approximately 2.5 acres.

g. BPRF is a sub-Installation of APG located in Charles County, Maryland (Appendix 1, Figure 4) on the north side of the Potomac River at its junction with Nanjemoy Creek.

h. BPRF serves as a test facility for various explosive and munitions systems. The U.S. Naval Research Laboratory holds a lease on 291 acres or BPRF.

i. Approximately 174 acres of 100-year floodplain and 263 acres of wetland are located on BPRF.

3. Proposed Action. APG/ALC/BPRF proposes to implement a PFONPA for routine, on-going, and/or negligibly impactful actions within wetlands and 100-year floodplains on APG/ALC/BPRF.

a. No Action. Under this alternative, APG/ALC/BPRF will not implement a PFONPA for routine, on-going, and proposed actions within wetlands and 100-year floodplains and will instead complete individual FONPAs on a case-by-case basis, as required. As previously discussed, there is substantial acreage of wetlands and floodplains on APG/ALC/BPRF making it difficult to site proposed actions on lands which do not contain these sensitive resources. In addition, much of the existing built environment is located within or directly adjacent to, these sensitive resources and require on-going repairs and maintenance to support the mission. This requires the submittal of numerous individual FONPAs. The associated delays with each individual FONPAs could result in loss of funding for a specific project, delays in mission, as well as the further deterioration of a project or site, resulting in greater impacts to sensitive resources.

b. Implement PFONPA (Preferred Action)

(1) Under this alternative, APG/ALC/BPRF will implement a PFONPA for routine and on-going actions on the Installation within wetlands and 100-year floodplains. The Wetland Program Manager will conduct project reviews via the Installation NEPA process to determine if each action meets the criteria suitable to tier from the PFONPA.

(2) Those criteria are: (a) impact is no more than negligible adverse to wetlands and/or floodplains; (b) action falls within the range of approved actions in the APG/ALC/BPRF PFONPA. The impact level of “negligible” is defined as “impacts that are so low as to not be perceptible or measurable,” and corresponds with the definition of negligible used in APG/ALC/BPRF NEPA documents, for consistency. To tier from the PFONPA, an action must meet the criteria.

(3) The APG/ALC/BPRF Wetland Program Manager will review all actions utilizing the internal Standard Operating Procedure and inform the NEPA Program Manager if the action qualifies to tier from the PFONPA. This will be noted in the projects corresponding NEPA document and in the Administrative Record for the

PFONPA. If the action does not qualify, an individual FONPA will be prepared for that project/action, in accordance with EO's 11988 and 11990.

4. The items covered under this PFONPA include:

a. Exterior renovation and repairs to existing facilities and infrastructure that involve ground disturbance to restore the infrastructure to a functional condition, examples of which include repairs to buildings, parking lots, and sidewalks.

b. Maintenance and repair of existing roads, tank trails, railroads, and other transportation conveyances within the cantonment area and the range and training lands, to include quarterly maintenance, application of gravel, stabilization, ditching, and/or grading.

c. Maintenance, repair, restoration, and replacement of existing bridges, culverts, dams, railroads, and other water-crossing and conveyance structures in accordance with the Maryland State Programmatic General Permit (MDSPGP-6) requirements, examples of which include patchwork, replacing damaged sections of a structure in disrepair, upgrading to meet current safety standards, or partial-to-complete replacement. (MDSPGP-6 attached)

d. Maintenance and repair of existing recreational structures such as docks, boat ramps, and sports fields.

e. Maintenance and repair of existing components of the stormwater drainage systems, including culverts, ditches, shoulder work, debris removal, and restoration or replacement-in-kind.

f. Spill response operations, including construction of temporary dams to restrict or stop flow of contaminants.

g. Installation, maintenance, repair, and/or replacement of in-kind scientific measurement devices, such as metering, for the purpose of monitoring environmental conditions.

h. Shoreline and streambank stabilization in accordance with MDSPGP-7 requirements.

i. General land maintenance and repairs that do not increase the amount of impervious surface within a watershed, to include dam maintenance, tree and brush removal along roads, railroad tracks, and fence lines, maintenance of firing lines of sight, grounds maintenance, mowing, and landscaping.

j. Demolition of existing structures in accordance with all environmental regulations where standard demolition practices would be applied to provide erosion and sediment control during demolition.

k. Upgrades to existing utilities and/or installation of new utilities within an existing right-of-way.

l. Removal of debris and accumulated sediment build-up from waterways and water access points in accordance with federal and state requirements.

m. Conservation, cultural resources, forestry, restoration, and other program management activities such as establishing and maintaining firebreaks, other forestry management activities, land regeneration activities, conducting archaeological resource recovery actions, conducting restoration program site investigations, pest management, fish and wildlife harvesting or enhancement, and/or other approved management activities.

n. Recreational use of areas within wetlands and 100-year floodplains to include, but not limited to, fishing, hunting, golfing, boating, and hiking.

o. Daily use of tank trails, range and training lands, artillery position areas, observation points, firing points, impact areas, catch boxes, and other resources for the purpose of testing and training.

p. Any new project or action which proposes or can be adjusted during early design to result in negligible impact to wetlands and/or 100-year floodplain including, but not limited to, temporary construction for access through wetlands and 100-year floodplain.

5. Minimization/Mitigation of Impact from Proposed Action.

a. It is the Department of Defense (DoD) policy and goal to minimize construction within areas designated as wetlands and 100-year floodplains. Therefore, during a project's siting and initial design process it may be possible to shift the site (fully or partially) out of these resource areas, given early coordination with Environmental Division Program Managers during design. The Installation's goal is to avoid impacts to wetlands and 100-year floodplains wherever possible; minimize impacts, where they cannot be avoided, to the extent practicable, while still achieving the project purpose; then, mitigate for impacts that cannot be avoided. Minimization and mitigation methods are documented via the DoD Form 1391, NEPA documentation and, if required, the associated permitting process.

b. The Installation requires projects be built above the 100-year floodplain elevation. Avoiding impacts to floodplains protects infrastructure and the associated streams and wetlands on the floodplain, both upstream and downstream. Use of proper stormwater management systems allows stormwater flow to be maintained at the same level both pre- and post-construction.

c. Installations are required to maintain local, state, and federal compliance for actions with the potential to impact local waters. APG/ALC/BPRF implements low

impact development and runoff controls, according to the Municipal Separate Storm Sewer System permit and Section 438 of the Energy Independence and Security Act of 2007. This ensures that when work within the floodplain is unavoidable, Standard Operating Procedures require that encroachment will not cause a measurable change to the upstream or downstream base flow elevation. In addition, any authorized fill within the 100-year floodplain shall result in no net loss of natural floodplain storage.

d. The establishment of general and site-specific Best Management Practices (BMPs) will be identified for all work within wetlands and 100-year floodplains. BMPs will be identified in advance, added to site plans, and must be utilized during all phases of work. Site inspections by the Wetland, Floodplain and Stormwater Program Managers will occur periodically during and following construction completion to ensure adherence. Should monitoring and/or inspections determine that additional measures are required, coordination between the Installation Program Managers and Project Managers will occur to identify measures that require adjustment. All such actions will be recorded in the Administrative Record for the Record of Environmental Consideration, Environmental Assessment, and/or Environmental Impact Statement.

6. Public Review.

a. EO 11988 and EO 11990 state that agencies shall "provide opportunity for early public review of any plans or proposals for actions in wetlands and floodplains." The Draft PFONPA will be available for a 30-day public review and comment period via publication on the APG webpage. A public meeting is not required. All comments received will be responded to accordingly.

b. This PFONPA was available for a 30-day public review period (10 Nov 2026 – 10 Dec 2026) (Appendix 3), during which time XX comments were received, and the PFONPA was accordingly finalized.

7. Exclusions. Proposed actions excluded from this PFONPA include those actions for which a finding of negligible impact to wetlands and 100-year floodplains cannot be determined. As a result, an individual, project-specific FONPA will be prepared for those activities concurrently with the preparation of the NEPA document for that project, and in accordance with the requirements of EO 11988 and EO 11990.

8. Findings. Following an evaluation of the impacts associated with conducting routine, on-going and/or proposed new activities (as defined in this PFONPA), actions that are categorically excluded within wetlands and 100-year floodplains, APG/ALC/BPRF find that there is no practicable alternative to conducting these activities within the wetlands and 100-year floodplains. Furthermore, pursuant to EO 11988 and EO 11990, and as described above, APG/ALC/BPRF will take all practical measures to minimize impacts associated with these activities within in wetlands and 100-year floodplains. This PFONPA is effective from the date on which it was signed and will be reviewed annually by the Installation Program Managers to ensure protection of Installation resources.

9. Accordingly, I find there is no practicable alternative to siting all future proposed actions entirely outside of floodplains and/or wetlands; however, the Army will utilize all practicable measures to avoid and minimize impacts to the greatest extent practicable.

Date

JAMES M. SMITH
Lieutenant General, USA
Commanding, IMCOM

LIST OF APPENDICES

Appendix 1 – Installation Location and Wetland Figures.

Appendix 2 – Memorandum Of Understanding with State of Maryland for Federal Consistency with Coastal Zone Management Act.

Appendix 3 – Record Of Public Review.

REFERENCES

EO 11988, *Floodplain Management*. (1977, April 25).

EO 11990, *Protection of Wetlands*. (1977, April 25).

U.S. Army Aberdeen Proving Ground – Aberdeen Area and Edgewood Area. *Integrated Natural Resources Management Plan*. November 2022. APG, MD.

U.S. Army Aberdeen Proving Ground – Adelphi Laboratory Center and Blossom Point Research Facility. *Integrated Natural Resources Management Plan*. January 2022. APG, MD.

Appendix 1

Installation Location and Wetland Figures

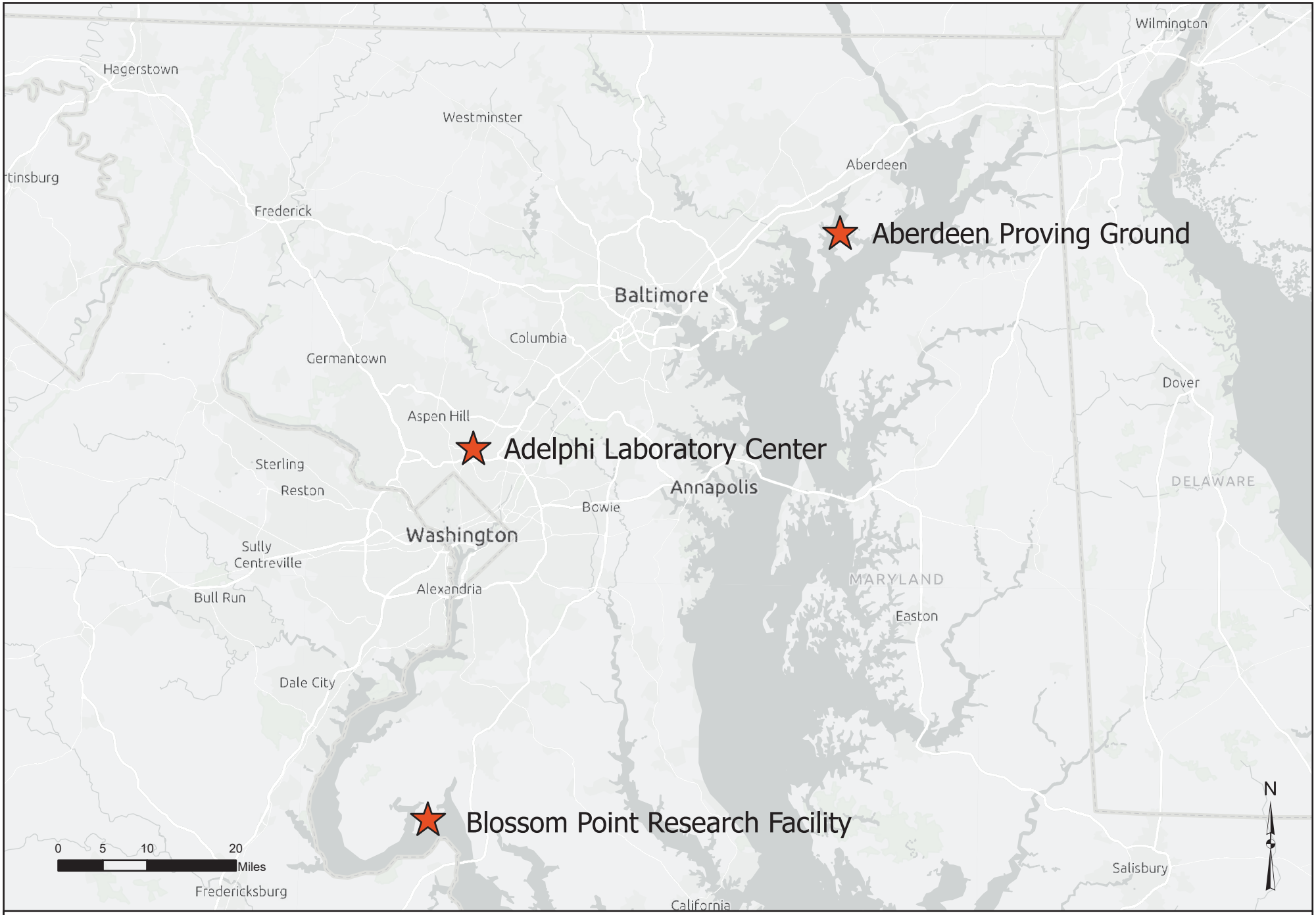


Figure 1
Installation Locations

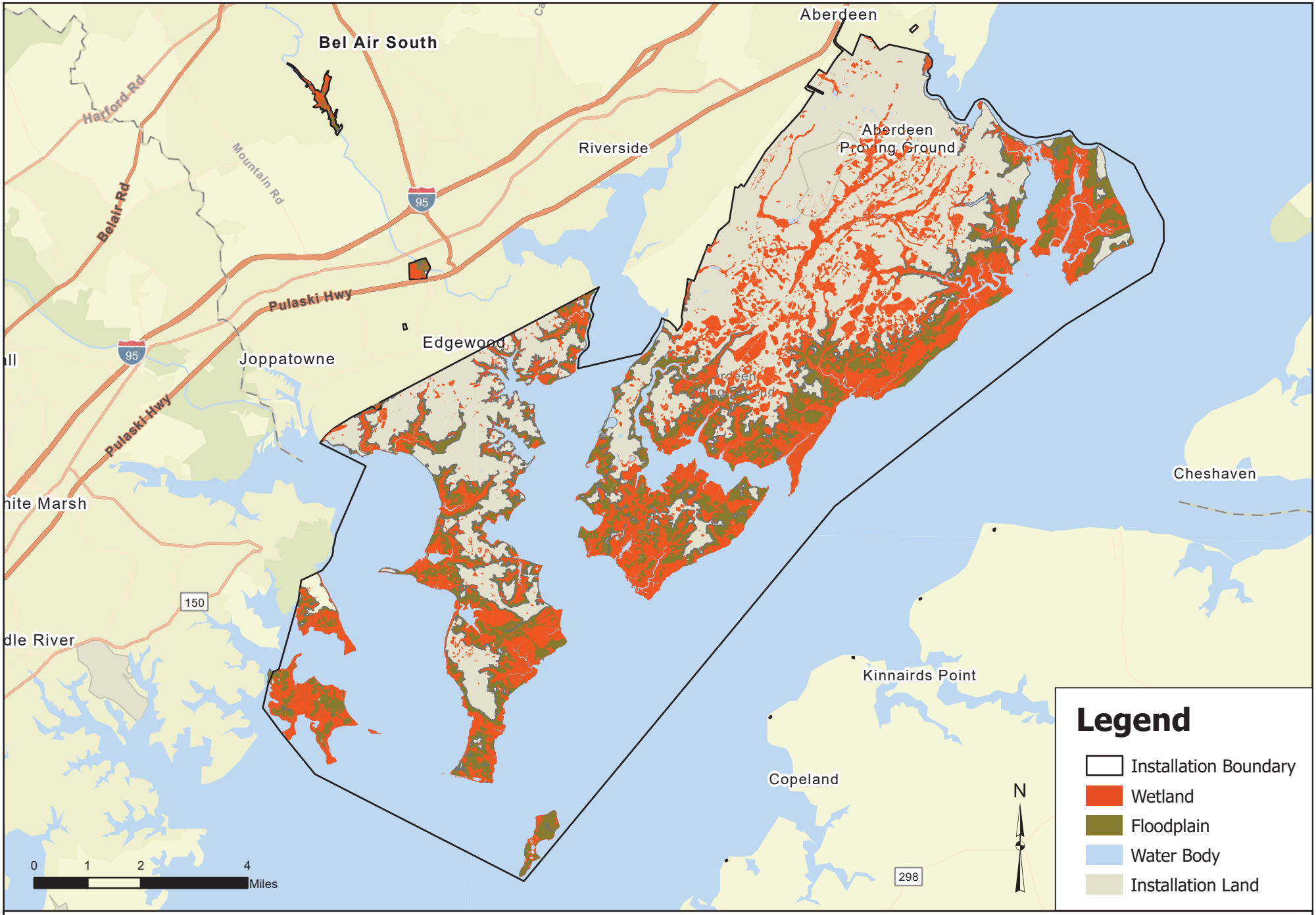


Figure 2
Aberdeen Proving Ground

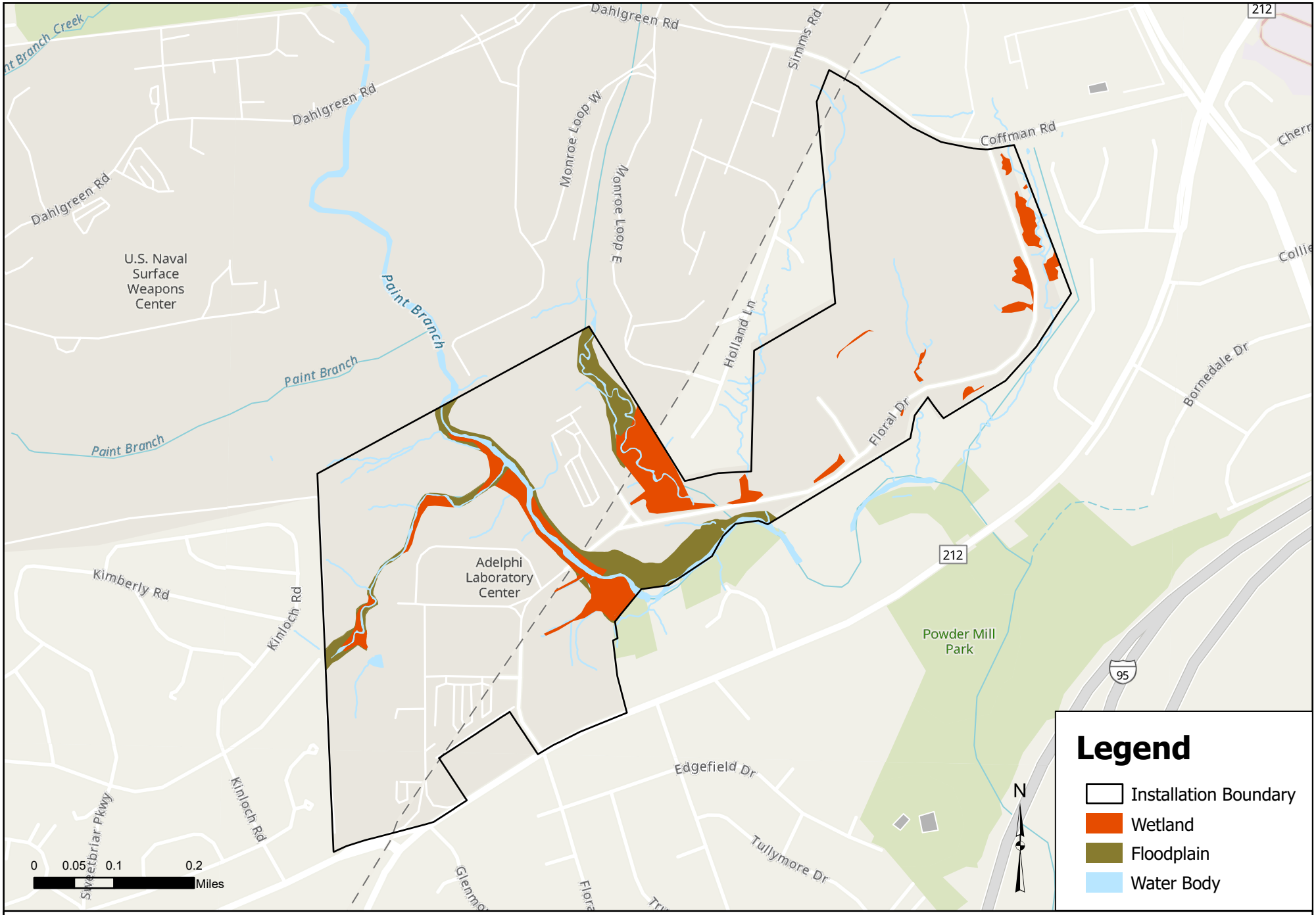


Figure 3
Adelphi Laboratory Center

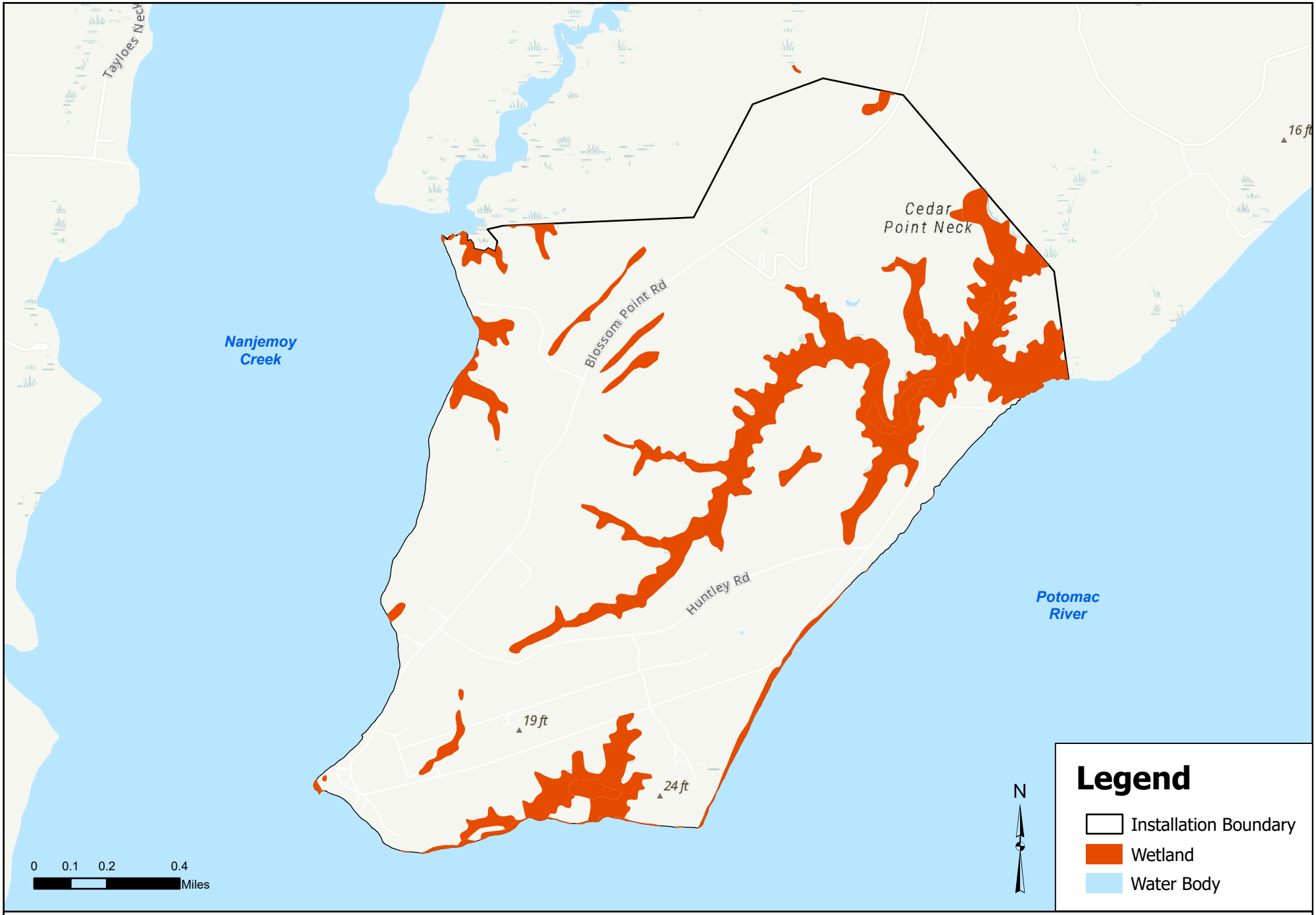


Figure 4
Blossom Point Research Facility

Appendix 2

Memorandum of Understanding with State of Maryland for Federal Consistency with Coastal Zone Management Act

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));

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,

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

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

Hershell 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[1]

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)

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[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)

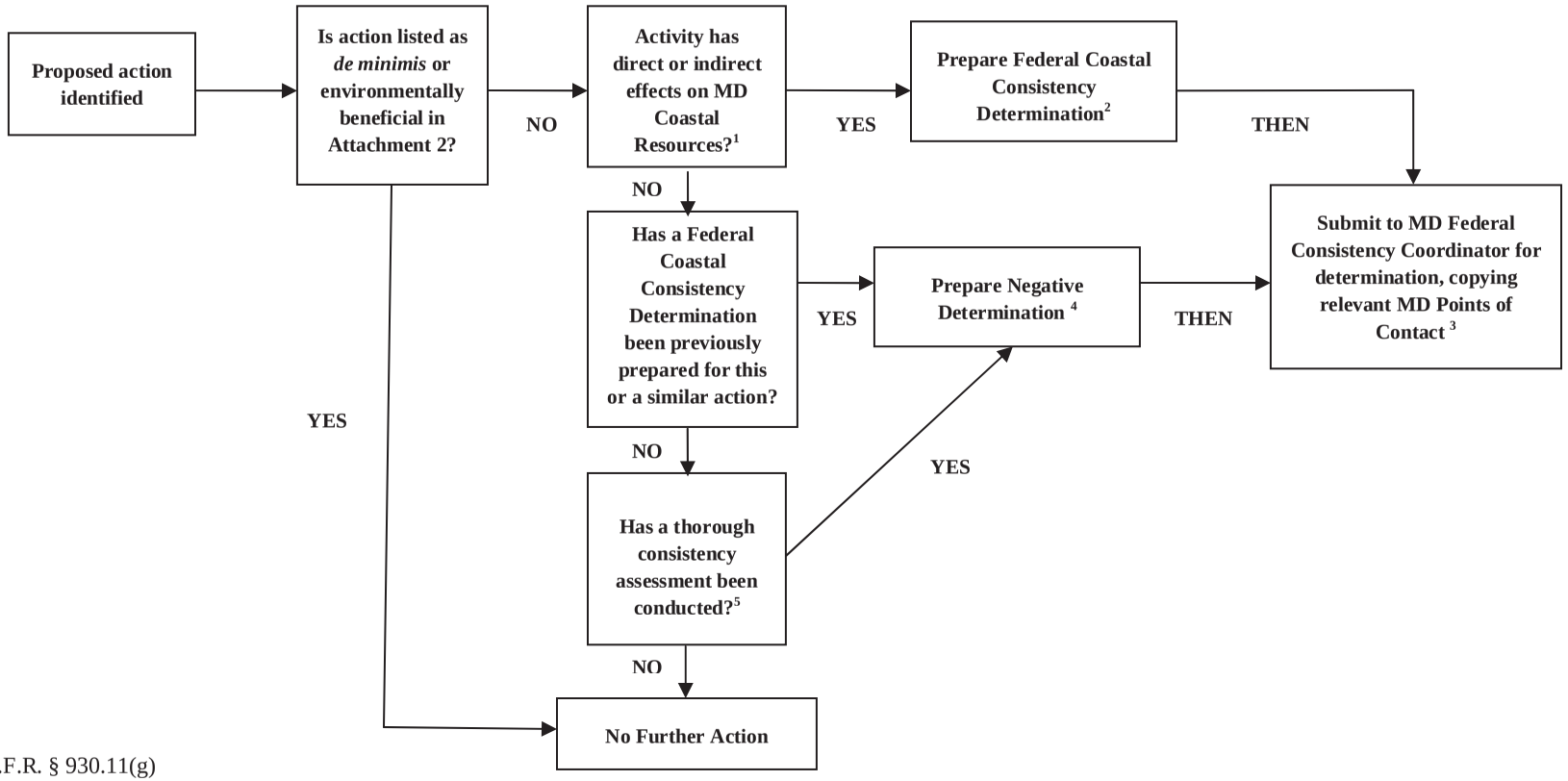
II. Environmentally Beneficial Activities: Pursuant to 15 C.F.R. § 930.33(a)(4), the list of environmentally beneficial activities are excluded from further State agency consistency review.

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

Attachment 3: Federal Consistency Review Flow Chart



[1]15 C.F.R. § 930.11(g)

[2]See 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.

[3]See 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).

[4]In 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 15 days or less. 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 Department of Defense'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.

[5]An 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.

Appendix 3

Record of Public Review