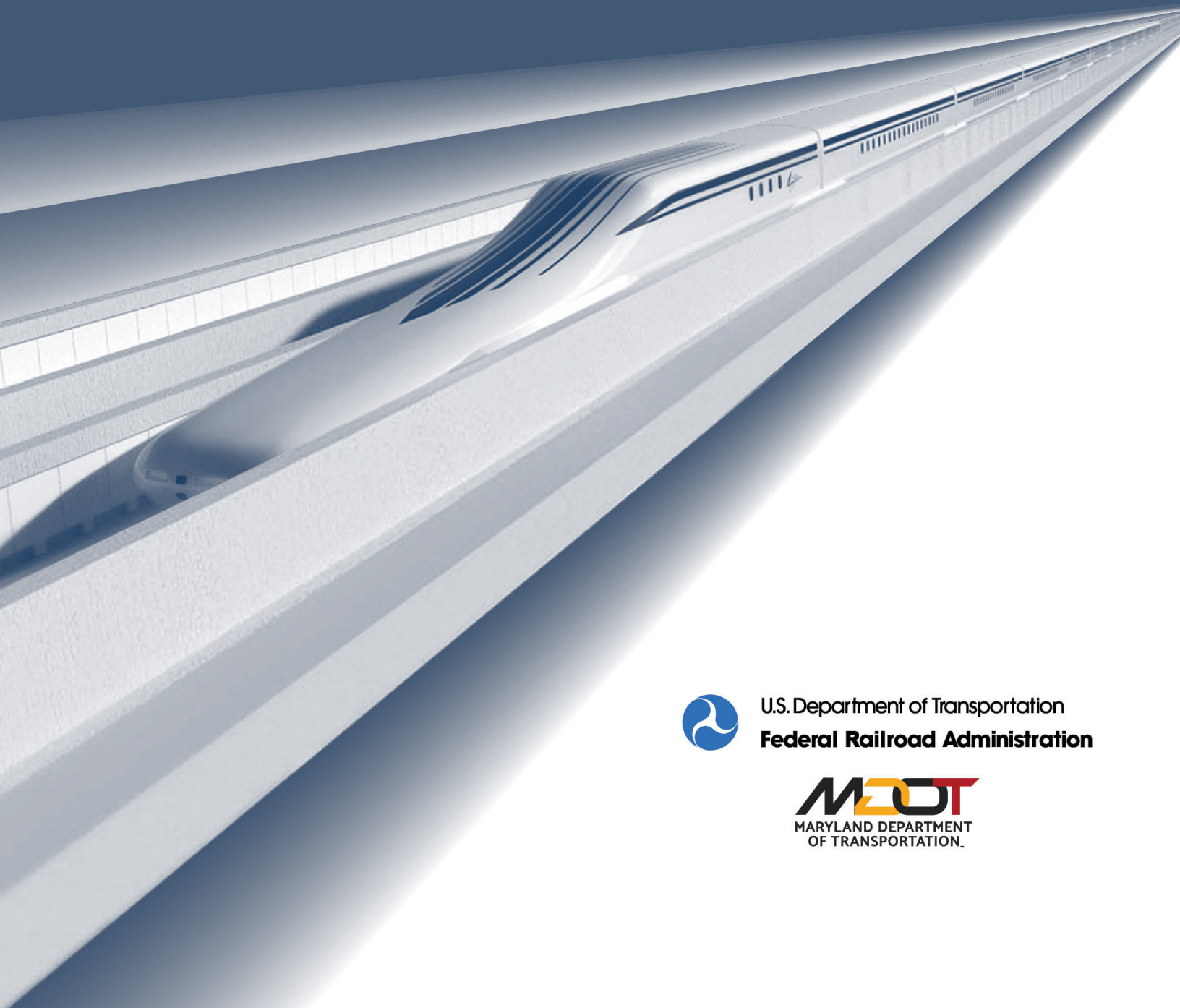


# Appendix D.1

## Permits and Authorizations

### BALTIMORE-WASHINGTON SUPERCONDUCTING MAGLEV PROJECT

DRAFT ENVIRONMENTAL IMPACT STATEMENT AND  
SECTION 4(f) EVALUATION



U.S. Department of Transportation  
**Federal Railroad Administration**



## TABLE OF CONTENTS

D.1 Permits and Authorizations ..... D.1-1

## LIST OF TABLES

Table D.1-1: Regulatory Requirements ..... D.1-2

## D.1 PERMITS AND AUTHORIZATIONS

As the lead Federal agency, the Federal Railroad Administration (FRA) will evaluate compliance under numerous state and Federal laws, Executive Orders and regulations relevant to the Superconducting Magnetic Levitation (SCMAGLEV) Project. If a Build Alternative is selected in the Record of Decision (ROD), Baltimore-Washington Rapid Railroad (BWRR) will be responsible for fulfilling all requirements of applicable statutes, regulations and policies in order to construct and operate the Project. All necessary permits, authorizations and agreements will be obtained consistent with the ROD and prior to any construction. **Table D.1-1** provides a summary of the responsible agency; relevant laws/regulations; related permits, license and/or agreement and the project specific activity requiring approval. FRA recognizes that this does not include details of all Federal actions necessary by each bureau and the specific authorities that would allow them to authorize or approve the project.

Several Federal properties would be affected through the selection of a Build Alternative. If a transfer of these lands is proposed and conversion to transportation use, the Federal agencies may need to complete a separate National Environmental Policy Act (NEPA) analysis, as well as other federal actions that may be required. This would result if the Federal agency determines that their role as an official Cooperating Agency in this Draft Environmental Impact Statement Section 4(f) and Section 6(f) (DEIS) does not already satisfy their NEPA compliance requirements for land disposition or granting easements.

For example, use of U.S. Department of Agriculture (USDA) Beltsville Agricultural Research Center (BARC) generally requires congressional approval to allow either of the proposed train maintenance facility (TMF) sites proposed on BARC lands, as this would be a “non-conforming” use of the property. The U.S. Fish & Wildlife Service (USFWS) will require congressional approval for impact to the Patuxent Research Refuge (PRR) property allowing the transfer of land to this transportation use. It is anticipated that the USFWS will also require preparation of a Compatibility Determination. This is necessary when a third party proposes use of a National Refuge System. A Compatibility Determination has not been prepared at this time and would require preparation prior to final selection of a preferred alternative and completion of the Final Environmental Impact Statement.

The FRA is conducting ongoing coordination with the agencies throughout the planning phase of the Project, as summarized in previous Chapters and Sections. Coordination with the regulatory and resource agencies will continue through further design phases, review and construction.

**Table D.1-1: Regulatory Requirements**

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
Air Quality	Dept. of Energy and Environment (DOEE) Maryland Dept. of Environment (MDE)	Clean Air Act of 1970, as amended; <u>Maryland</u> : Code of Maryland Regulations (COMAR) Title 26 Subtitle 11 <u>Washington, D.C.</u> : Title 20 District Municipal Regulations (DCMR)	<u>Maryland</u> : Air Quality Permit to Construct or Operate <u>Washington, D.C.</u> : Air Pollutant Permit	Construction and operations that may emit air pollutants
Airports	Federal Aviation Administration (FAA)	14 Code of Federal Regulations (CFR) Part 77 – Safe, Efficient Use, and Preservation of the Navigable Airspace	Notice of Proposed Construction or Alteration (Form 7640) . FAA may require an approval of an Airport Layout Plan update and/or release of obligations for Baltimore-Washington International Thurgood Marshall Airport (BWI Marshall Airport) and Tipton Airport (FME),	Construction activities that may affect navigable airspace at BWI Marshall Airport, FME, Department of Consumer and Regulatory Affairs (DCRA) and other FAA regulated airports along the project area
		49 U.S.C. § 47107(a)(16)(B) – Project Grant Application Approval Conditioned on Assurances about Airport Operations	BWI Marshall Airport layout plan	Activities on BWI Marshall Airport property that impact the airport layout plan
	Maryland Aviation Administration (MAA)	COMAR Title 11.03.06, Airport Zoning Regulations	Airport Zoning Permit	Any proposed obstructions, wildlife attractants and land uses that are incompatible with airport operations at BWI Marshall Airport
Coastal Resources	MDE/Maryland Dept. of Natural Resources (MDNR)	Coastal Zone Management Act of 1972 (United States Code [U.S.C.] § 1451 et seq and 15 CFR part 930) and the Coastal Zone Reauthorization Act of 1990	Consistency Determination Concurrence letter	Activities within the Coastal Zone with direct Federal activities; Federal license or permits; Federal assistance to state and local governments

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
<b>Cultural Resources and Parkland</b>	US Army, National Aeronautics Space Administration (NASA), National Park Service (NPS), US Secret Service, US Department of Agriculture (USDA), US Fish & Wildlife Service (USFWS)	Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. §470)	Archaeological Resources Protection Act Permit (Form DI-1926)	Archaeological Resources Protection Act (ARPA) permit required before conducting any archaeological investigation on Federal lands
	Maryland: Maryland Historical Trust (MHT) Washington, D.C.: State Historic Preservation Office (SHPO) Advisory Council on Historic Preservation (ACHP)	National Historic Preservation Act of 1996, as Amended (36 CFR 800) Section 106	Section 106 consultation with SHPO and MHT and implementation of a project Programmatic Agreement (PA) with ACHP and other signatories as determined	All future phases of historic property ID, National Register of Historic Places (NRHP) evaluation, Phase II archaeological NRHP evaluation, Phase III data recovery (if required), and implementation of mitigation actions as specified in the project Programmatic Agreement mitigation. Federal agencies must consider the effects of a Federal undertaking on historic properties and to afford the ACHP an opportunity to comment on the project. Federal agency must consult with MHT, SHPO, and Federally recognized Indian tribes.
	FRA Department of the Interior (DOI) and official with jurisdiction	49 U.S.C. 303, Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966	Review by DOI and approved by FRA	Proposed use of parks, recreational lands, refuges and historic sites for transportation projects
	FRA and DOI	Land and Water Conservation Fund Act (16 USC4601-4 to 4601-11)	Compliance with Section 6(f) of the Act beginning in the NEPA phase	Proposed conversion of park land to transportation use

Appendix D.1  
Permits and Authorizations

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
	FRA	American Indian Religious Freedom Act (42 U.S.C. 1996)	Compliance is implemented through mitigation measures identified in a ROD	Disturbance of graves associated funerary objects, sacred objects, and items of cultural patrimony
	Commission of Fine Arts (CFA)	An Act Establishing a Commission on Fine Arts, as amended	Concept Approval and Final Approval	Review design proposals for public and private properties in the National Capital
<b>Energy</b>	FRA	EO 13211; EO 13824; and Public Law 110-140 - Energy Independence and Security Act of 2007	Meet statutory requirements	Any Federal action that may affect the supply, distribution, and use of energy.
<b>Federal Facilities</b>	Department of Administration (DOA) Department of Defense (DOD) Department of Homeland Security-U.S. Secret Service (DHS)	Coordination required to satisfy any Federal obligation/permit/approval necessary to conduct work on such Federal land		Any activity proposed on DOA, DOD, and/or DHS lands
	Surface Transportation Board (STB)		Authorization may be required if the Board determines that it has jurisdiction over the SCMAGLEV Project.	Economic regulation of various modes of surface transportation.
	USFWS	National Wildlife Refuge System Administration Act of 1966, as amended	Coordination required to satisfy Federal obligation/permit/approval necessary to conduct work on USFWS land	Any activity on proposed USFWS lands
	National Capital Planning Commission (NCPC)	National Capital Planning Act of 1952	Coordination required to satisfy Federal obligation/permit/approval necessary to conduct work on NCPC land	Activities proposed within the National Capital planning region

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
	NPS	NPS Director's Order (DO) 12 – Conservation Planning, Environmental Impact Analysis and Decision Making and DO 53 Special Park Uses 54 U.S.C. § 102901(b) and 100902	Special Use Permit (10-114) Right -of-Way Permit	Activities that propose disturbances within NPS lands; Projects that require a land exchange, Utilities that cross NPS lands.
	US Army Corps of Engineers (USACE)	Section 14 of the Rivers and Harbors Act of 1899; 33 U.S.C. 408	Section 408 Letter of "No Objection"	Construction activities proposed adjacent to or within Federal civil works projects (i.e. navigation channels and levees)
<b>Fish, Wildlife and Critical Habitat</b>	USFWS National Marine Fisheries Service (NMFS)	Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1544), as amended Section 7 (Interagency Consultation and Biological Assessments) Section 9 (Prohibited Acts) Section 10 (Habitat Conservation Plans)	Compliance is implemented through consultation and "Incidental Take Permits" defined in Sections 7, 9 and 10. Species surveys may be required.	Any action to potentially impact Federally listed species
	USFWS	U.S. Fish and Wildlife Service Coordination Act (16 U.S.C. Sections 661 to 667[e] et seq.)	Information for Planning and Consultation (IPaC) review and interagency consultation during USACE Section 404 review and approval satisfies the consultation requirement	Consultation with USFWS and the fish and wildlife agencies of States where the "waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted . . . or otherwise controlled or modified" by any agency under a Federal permit or license. Purpose to "preventing loss of and damage to wildlife resources."

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
	National Marine Fisheries Service (NMFS)	Magnuson-Stevens Fishery Conservation and Management Act (U.S.C Section 1801 et seq.)	NMFS project review request and interagency consultation during USACE Section 404 review and approval	Proposed activities in tidally influenced waters extending up to 200 miles offshore
	USFWS	Migratory Bird Treaty Act (MBTA) (16 U.S.C. Sections 703 to 712) Migratory Bird Treaty Reform Act Protection of Migratory Bird Populations (Executive Order 13186)	Voluntary compliance is implemented through mitigation measures identified in a ROD	Any activity that may result in the "taking" of a native bird
	USFWS	Bald and Golden Eagle Protection Act (16 U.S.C. Sections 668 to 668[d])	Incidental Take Permit Nest Take Permit	Any activity that may "take "or disturb Golden or Bald Eagle including their nest and eggs.
	MDNR	Nongame and Endangered Species Conservation Act of 1975 (COMAR 08.03.08)	MDNR Environmental Review Unit project review letter of findings MDNR Wildlife and Heritage Unit project review letter of findings	Project review coordination
<b>Floodplains</b>	USDOT	USDOT Order 5650.2 Floodplain Management and Protection	Floodplain analysis included in the NEPA document	Proposed activities within the Federal Emergency Management Agency (FEMA) floodplain
	FRA and USACE	Executive Order No. 11988 Floodplains Executive Order No. 13690	Review for compliance with the Executive Orders (EO). Floodplain Use Permits Development and Approval of a Letter of Map Revision (LOMR) or Conditional letter (CLOMR)	Proposed development in the mapped floodplain
	MDE	COMAR 26.17.04, Construction on Nontidal Waters and Floodplains	MDE review of the engineering analysis; Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland (JPA)	Proposed construction, including fill in the mapped floodplain



Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
<b>Grading and Stormwater Management</b>	DOEE and MDE	<u>Maryland</u> : Sediment Control Law of 1970; COMAR 26.17.01, as amended; Stormwater and Erosion and Sediment Control Guidelines for State and Federal Projects <u>Washington, D.C.</u> : DCMR Title 21 Chapter 5	Approved of Erosion and Sediment Control Plans	Greater than 5,000 sq ft of proposed disturbance
	DOEE and MDE	<u>Maryland</u> : COMAR 26.17.02; Stormwater Management Act of 2007; Stormwater and Erosion and Sediment Control Guidelines for State and Federal Projects <u>Washington, D.C.</u> : 2013 Rule on Stormwater Management	Approved Stormwater Management Plans	Greater than 5,000 sq ft of proposed disturbance
	MDNR - Critical Area Commission (CAC)	Chesapeake Bay Critical Area Law (COMAR 27.02)	Critical Area Consistency concurrence letter, includes adherence to the 10% Rule	Development projects within the Critical Area must minimize impacts to water quality through the 10% Rule and protection of the 100-foot buffer
<b>Noise</b>	Federal, State, and Local Authorities	Compliance with local, county, regional and state ordinances		Construction related noise
<b>Railroads</b>	FRA	48 U.S.C. 20101 et seq.	Grant a Rule of Applicability, Waiver or series of Waivers, or other safety approval	Review of Maglev system to ensure safe operation
	AMTRAK	Temporary Permit to Enter Amtrak Property		Temporary access to AMTRAK

Appendix D.1  
Permits and Authorizations

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
	CSX Corporation (CSX)	Right of Entry Permits (ROE); Utility Permits Longitudinal Occupancy Permit		ROE for temporary access to CSX property; Utility Permit for utilities that go over, across or under the railroad tracks or CSX Property; Longitudinal permit for construction of new utilities parallel to the railroad tracks
	Maryland Department of Transportation (MDOT) Maryland Transit Administration (MTA)	Applicable ROE and Utility Permits		Access onto MDOT property for Cherry Hill Station
	Washington Metropolitan Area Transit Authority (WMATA)	Temporary Use Permit		Construction projects adjacent to WMATA property
<b>Roads and Traffic Control</b>	District Department of Transportation (DDOT)	Public Space Occupancy Permit and Traffic Control Plan		If the project proposes to impede pedestrian traffic, vehicle parking or travel or if a sidewalk, roadway or alley is being used for construction access or staging
	DDOT	Public Space Construction/Excavation Permit		If the project includes excavation in public space for utilities, sheeting and shoring work; construction of fences or any paving in public spaces
	MDOT	MDOT - Traffic Control Permit and Access Management Permits		For Project needs to temporarily alter traffic patterns for construction; Relocation of utilities within State transportation Right-of Way
	Local Jurisdictions	Various County Right of Way agreements or permits may be needed		For Project needs to impact traffic patterns or utilities during construction

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
<b>Water Appropriations</b>	MDE	COMAR 26.17.06 and COMAR 26.17.07	Water Appropriations Permit	Water withdrawal as a result of construction activities including tunnel boring
<b>Wetlands and Waterways Activities and Water Quality</b>	USACE	Rivers and Harbors Act of 1899 (33 U.S.C. 401 and 403): Section 10	Maryland State Programmatic General Permit (MDSPGP)-5, Nationwide Permits, Regional General Permit; Letter of Permission or Individual Permit	A proposed obstruction or alteration of any navigable water of the U.S.
	MDE	Clean Water Act: Section 311 as amended by the Oil Pollution Control Act of 1990	Development and implementation of a Spill Prevention, Control and Countermeasure (SPCC) Plan	Staging of construction equipment and storage of construction materials for the project
	MDE and DOEE	Clean Water Act: Section 401	Water Quality Certification	Regulates the discharge of dredged or fill material into waters of the U.S. including wetlands
	DOEE or MDE	Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act): Section 402	National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities (Notice of Intent)	Point source discharge of pollutants such as construction related stormwater into Waters of the U.S.
	Washington, D.C. Water	DC Water Temporary Discharge Permit		Point source discharge into the municipal sanitary sewer system
	Anne Arundel County Baltimore City Baltimore County Prince George's County	Temporary Water Discharge Permit		Point source discharge into the various municipal sanitary sewer systems in the affected Maryland counties
	Local Health Departments MDE DC	<u>Maryland</u> : COMAR Title 26,04.04 <u>Washington, D.C.</u> : DCMR Title 21 Chapter 18	<u>Maryland</u> : Well Construction Permit <u>Washington, D.C.</u> : Well Permit	Geotechnical borings and proposed construction in/near existing wells

Issue	Responsible Agency	Relevant Laws/Regulation	Permit, License or Agreement	Activity Requiring Approval
	USACE	Clean Water Act: Section 404	MDSFGP-5; Regional General Permit; Nationwide Permits or Individual Permit	Regulates the discharge of dredged or fill material into waters of the U.S. including wetlands
	FRA	Executive Order No. 11990 Wetlands	Compliance is through the NEPA process	Required Federal agencies to consider alternatives to wetland sites and limit potential damage
	MDE (Nontidal Wetlands Division)	Nontidal Wetlands Protection Act of 1988	Non-Tidal Wetland Letter of Authorization or Permit	Project impacts to state non tidal wetlands including isolated wetlands
	MDE	Chapter 526 of the Laws of 1933, COMAR 26.17.04 Maryland Waterway Construction Statute	MDE Authorization to Proceed	Proposed activities in state waterways that propose to change the course, current or cross-section
	MDE (Tidal Wetlands Division) or MD Board of Public Works	Tidal Wetlands Act	Tidal Wetland Permit (Issued by MDE) or Tidal Wetlands License (issued by the MD Board of Public Works)	Any proposed work in, on, over or under State tidal wetlands (including waterways)
<b>Vegetation Management</b>	Various agencies	Executive Order No. 13112 Invasive Species, as amended	Compliance is implemented through mitigation measures identified in a ROD; an approved Invasive Species Management Plan for ground disturbances on Federal properties	Invasive Species management plan is typically a condition of a DOI Special Use Permit
	DDOT and DC Urban Forestry Division (UFD)	Urban Forest Preservation Act of 2002 Tree Canopy Amendment Act of 2016 DCMR Title 24	Tree Permit Special Tree Removal Permit	Any resident or contractor that wants to plant, prune or remove public street trees. Removal of any public or private property tree dependent upon diameter of tree.
	MDNR	Maryland Forest Conservation Act of 1991, COMAR 8.19	Approved Forest Conservation Plan (FCP)	Forests removal greater than 40,000 sq ft