DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF SECOND EMERGENCY RULEMAKING

Critical Areas - Wetlands and Streams

The Director of the District Department of Energy and Environment, pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code 8-151.01 *et seq*. (2015 Repl. and 2019 Supp.)), the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.* (2015 Repl. and 2019 Supp.)), the Fisheries and Wildlife Omnibus Amendment Act of 2016 (D.C. Law 21-282; D.C. Official Code § 8-1731.02 *et seq.* (2019 Supp.)); Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2017-281, dated November 1, 2017, hereby gives notice of the intent to adopt a second emergency rulemaking to add new Chapters 25 (Critical Area – General Rules) and 26 (Critical Area – Wetlands and Streams) to Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary for the immediate preservation of the public health, safety, and welfare by preventing further loss of valuable wetland and stream resources that may no longer be protected by federal law and to clarify procedures for District certification of federal permits for discharges into District waters. Section 404 of the federal Clean Water Act (CWA) requires a permit for the discharge of dredged or fill material into waters of the United States. 33 U.S.C. § 1344. These permits are issued by the United States Army Corps of Engineers (Corps). Before issuing a permit, the Corps must obtain a certification from the District pursuant to CWA § 401 that the discharge will comply with the District water quality criteria. 33 U.S.C. § 1341. The Department of Energy and Environment currently certifies permits issued by the United States Army Corps of Engineers for discharges of dredged and fill material into District waters.

Two recent federal rulemakings will significantly curtail the District's ability to protect its aquatic resources through the § 401 certification process. First, the Environmental Protection Agency (EPA) and the Department of the Army have finalized the Navigable Waters Protection Rule, revising the definition of waters of the United States (EPA Docket ID: EPA-HQ-OW-2018-0149, posted April 21, 2020). This rule removes federal protection for ephemeral streams and wetlands that are not adjacent to traditional navigable waters. In addition, on June 1, 2020, EPA finalized the Clean Water Act Section 401 Certification Rule that will significantly restrict the scope of state review of federal permits for § 401 certification (EPA Docket ID: EPA-HQ-OW-2019-0405-0025, posted August 22, 2019). In light of these changes, this emergency rulemaking is necessary to clarify the District's procedures for certifying federal permits and to ensure continued protection of resources that will no longer require federal permits.

A Notice of Emergency and Proposed Rulemaking was adopted on October 7, 2020, became effective upon publication in the *D.C. Register* on October 16, 2020 at 67 DCR 12127, and remained in effect until February 4, 2021. DOEE received comments on the emergency and proposed rulemaking and is reviewing and evaluating those comments. This second emergency rulemaking is required to prevent a lapse of the requirements of the first emergency rulemaking while DOEE determines whether changes are needed. If DOEE determines that substantive

changes are needed, it will publish another emergency and proposed rulemaking and provide an opportunity for public comment on the changes. The language of the regulations in this emergency rulemaking remains identical to the language in the first emergency and proposed rulemaking. This second emergency rulemaking was adopted on January 15, 2021, and shall remain in effect for one hundred twenty (120) days after the date of adoption, unless earlier superseded by the publication of an emergency and proposed rulemaking or a final rulemaking.

Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 25, CRITICAL AREA – GENERAL RULES, to read as follows:

CHAPTER 25 CRITICAL AREA – GENERAL RULES

2500 SCOPE AND APPLICABILITY
2501 DESIGNATION OF CRITICAL AREAS
2502 INSPECTION
2503 STOP WORK ORDERS
2504 VIOLATIONS AND ENFORCEMENT PROCEDURES
2505 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW
2599 DEFINITIONS

2500 SCOPE AND APPLICABILITY

2500.1 The procedures and requirements of this chapter shall apply to any person conducting an activity regulated by this chapter or by Chapter 26 of Title 21 of the District of Columbia Municipal Regulations (DCMR). Together, these chapters are designated the Critical Area rules.

2501 DESIGNATION OF CRITICAL AREAS

2501.1 The Department of Energy and Environment (DOEE or Department) may designate critical areas by regulation describing the location and extent of the critical areas or the criteria for determining the location and extent of the critical area.

2501.2 The Department designates the following as critical areas within the District:

(a) Any wetland, as defined in § 2699; and

(b) Any stream, as defined in § 2699.

2502 INSPECTION

2502.1 The Department may conduct an inspection of an activity regulated under the Critical Area rules to ensure compliance with the rules.

2502.2 The Department or its representative may, at any reasonable time, upon the presentation of appropriate credentials, and with the consent of, the owner, operator, or person in charge:

(a) Enter premises where a regulated activity subject to the Critical Area rules is located or conducted;

(b) Access and copy any record, report, or other document or information related to compliance with the Act;

(c) Inspect any site or activity subject to this chapter, including to verify sufficient maintenance; and

(d) Conduct sampling, testing, monitoring, or analysis.

2502.3 A person performing a regulated activity shall communicate with the Department as follows:

(a) Provide preconstruction notification at least seven (7) business days before the start of the regulated or mitigation activity; and

(b) For the completion of the regulated activity or mitigation project, and to request a final inspection, contact the Department at least seven (7) days in advance.

2502.4 The Department may require an additional inspection at a particular stage of construction by specifying that requirement in the permit, or by specifying that it must be included in the approved final site plan or approved mitigation plan.

2502.5 No person may proceed with work past a stage of construction that the Department has identified as requiring an inspection unless:

(a) The Department's inspector has issued an "approved" or "passed" report;

(b) The Department has approved a permit, certification, or mitigation plan modification that eliminates the inspection requirement; or

(c) The Department otherwise eliminates or modifies the inspection requirement in writing.

2502.6 The Department shall determine whether the work, construction, and maintenance comply with the approved permit, certification, or mitigation plan.

2502.7 The Department may conduct inspections of the site on a periodic or as-needed basis.

2502.8 If the Department is denied access to enter or inspect and copy records pursuant to subsection (a) of this section, the Department may apply to the Superior Court for the District of Columbia for a search warrant.

2503 STOP WORK ORDERS

2503.1 The Department may issue a stop work order if it has determined that one (1) or more of the following conditions exists:

(a) Noncompliance with a notice that requires corrective action;

(b) Material false statement or misrepresentation of fact in an application that the Department approved for the project;

(c) During the project, the business license of a contractor or subcontractor is void, has expired, or has been suspended or revoked;

(d) Work involving an activity regulated under the Critical Area rules is being conducted:

(1) In violation of this chapter or Chapter 26;

(2) In an unsafe manner; or

(3) In a manner that poses a threat to the public health or the environment.

2503.2 A stop work order shall:

(a) Have immediate effect;

(b) Be issued in writing; and

(c) Be provided to:

(1) The person who has received an approval under this chapter or the person's authorized representative;

(2) The person doing the work; or

(3) The person on site who is responsible for the work.

2503.3 The stop work order shall identify the:

(a) Location of the work;

(b) Corrective action or cessation required;

(c) Time period required to complete corrective action;

(d) Reason for the order;

(e) Person issuing the order, including telephone contact, and, if available, email or other electronic means of address; and

(f) Steps to be taken to challenge or appeal the order.

2503.4 The stop work order shall be:

(a) Posted at the property; and

(b) Served by registered mail, hand-delivery with certification of service to the person who received approval for the work or that person's agent.

2503.5 No person shall remove a stop work order posted at a site without the Department's written approval.

2503.6 A person who continues work stopped by an order shall be in violation of this chapter for each day on which work is conducted, except for work:

(a) Required immediately to stabilize the activity and place the property in a safe and secure condition;

(b) That the Department orders; or

(c) Required immediately to eliminate an unsafe condition or threat to the public health or the environment.

2504 VIOLATIONS AND ENFORCEMENT PROCEDURES

2504.1 Each instance or day of a violation of each provision of the Critical Area rules shall be a separate violation.

2504.2 Upon identifying a violation of the Critical Area rules, the Department may issue one or more of the following:

(a) A Notice of Violation;

(b) A stop work order;

(c) A compliance order;

(d) An administrative order for costs and expenses;

(e) An Enforcement Notice; or

(f) A Notice of Infraction.

2504.3 The District may seek criminal prosecution if a person violates a provision of the Critical Area rules, to the extent authorized by section 17 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.16).

2504.4 The Attorney General for the District may bring a civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction, for civil penalties, damages, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief pursuant to sections 18(d) and 19 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.17(d) and 8-103.18), and section 206 of the Fisheries and Wildlife Omnibus Amendment Act of 2016 (D.C. Law 21-282; 8-1731.06).

2504.5 As an alternative to a civil penalty, the Department may impose administrative penalties, fines, and fees as sanctions for any violation of the Critical Area rules.

2504.6 Except when otherwise required by statute, an administrative civil fine shall be calculated according to the schedule of fines for violations of this chapter that has been approved pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04).

2504.7 Administrative adjudication of a Notice of Infraction shall be conducted by OAH, pursuant to its rules and procedures.

2505 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

2505.1 With respect to a matter governed by the Critical Area rules, a person adversely affected or aggrieved by an action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH) or OAH's successor.

2505.2 For the purposes of this chapter, an action of the Department taken with respect to a person shall include any:

(a) Approval of a permit or certification;

(b) Denial of a permit or certification;

(c) Compliance order;

(d) Administrative order for costs and expenses;

(e) Stop work order; or

(f) Other action of the Department which constitutes the Department's final decision process and is determinative of a person's rights or obligations.

2505.3 For the purposes of this chapter, a Notice of Violation or Enforcement Notice:

(a) Shall not be an action of the Department that a person may appeal to OAH;

(b) Shall be responded to within the time specified in the notice, including a written statement containing the grounds, if any, for opposition; and

(c) Shall not constitute a waiver of compliance or tolling of a period for a fine or penalty.

2505.4 If a person fails to agree to or settle an Enforcement Notice or otherwise denies a claim stated in an Enforcement Notice, the Department may cancel the Enforcement Notice and file a Notice of Infraction (NOI) with OAH for adjudication.

2505.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

(a) Within fifteen (15) calendar days of service of the notice of the action; or

(b) Another period of time stated specifically in this section for an identified Department action.

2505.6 The filing of an administrative appeal shall not in itself stay enforcement of an action, except that a person may request a stay according to the rules of OAH.

2505.7 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

2505.8 An action for judicial review of a final OAH decision shall not be a de novo review of OAH's factual conclusions, but shall be a review of the administrative record alone and not duplicate agency proceedings or hear additional evidence.

2505.9 Nothing in this chapter shall be interpreted to:

(a) Provide that a filing of a petition for judicial review stays enforcement of an action; or

(b) Prohibit a person from requesting a stay according to the rules of the court.

2599 DEFINITIONS

2599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – the Fisheries and Wildlife Omnibus Amendment Act of 2016 (D.C. Law 21-282; D.C. Official Code § 8-1731.02 *et seq.*)).

Certification - certification by the District pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) that a federal Clean Water Act Section 404 (33 U.S.C. § 1344) permit or letter of approval issued by the U.S. Army Corps of Engineers complies with the District's laws and regulations.

Critical Area rules – means this chapter and Chapter 26 of the District of Columbia Municipal Regulations.

Critical Areas - means the following areas and ecosystems:

(a) Areas containing species of local importance;

(b) Critical aquifer recharge areas;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently-flooded areas;

(e) Wetlands; and

(f) Areas the Department designates, by rule, as critical areas.

Department – the Department of Energy and Environment, or its successor agency.

District - the District of Columbia

Enforcement Notice – a document that identifies a violation, assesses a proposed civil infraction fine, and provides an opportunity to resolve the matter with the Department prior to adjudication by the OAH.

Maintenance:

(a) Means activities undertaken to prevent the deterioration, impairment, or need for repair of a serviceable fill area, structure, right-of-way, or land use, including management of vegetation and replacement of structural components.

(b) Does not include dredging, excavating, or filling, unless such action is conducted in a temporary sediment control structure, wash pond, or roadside ditch.

Mitigation – the restoration, creation, enhancement, or preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization measures have been taken.

Notice of Infraction – a document identifying a violation and assessing a civil infraction fine that is subject to adjudication by OAH upon request of the recipient.

Person - any individual, partnership, corporation (including a government corporation), trust association, firm, joint stock company, organization, commission, or the District or federal government.

Project - the entire activity on one or more parcels of land, of which a regulated activity is a part, including all proposed and projected phases and sections of land subdivisions.

Regulated activity – any of the following activities that are undertaken or originate in a wetland or stream:

(a) Removing, excavating, dredging, or filling with soil including sediments, sand, gravel, minerals, organic matter, or materials of any kind;

(b) Changing, blocking or diverting existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

(c) Disturbing the surface water level or groundwater elevation by drainage, impoundment, diversion, filling, or other means;

(d) Dumping or discharging or filling with materials;

(e) Grading or removing materials that would alter existing topography;

(f) Destroying or removing plant or aquatic life that would alter the character of a wetland;

(g) Introducing plant or aquatic life that would alter the character of a wetland;

(h) Diverting, obstructing, or piping water flow from its natural path;

(i) Conducting sediment or water sampling activities or studies;

(j) Driving piles, paving, and placing obstructions; and

(k) Undertaking other activities that change the physical, biological, and chemical integrity of a wetland.

Wetland –

(a) Means an area that is inundated by tides or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and.

(b) Includes a marsh, swamp, pond, or vernal pool.

Wildlife - any species of a vertebrate or invertebrate animal, excluding domestic species.

Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 26, CRITICAL AREA - WETLANDS AND STREAMS, to read as follows:

CHAPTER 26 CRITICAL AREA - WETLANDS AND STREAMS

2600 GENERAL PROVISIONS
2601 ACTIVITIES EXEMPT FROM THIS CHAPTER
2602 APPLICATION REQUIREMENTS FOR A DISTRICT WETLAND AND STREAM PERMIT OR A SECTION 401 WATER QUALITY CERTIFICATION
2603 APPLICATION PROCESSING
2604 FEE SCHEDULES FOR DISTRICT WETLAND AND STREAM PERMIT AND WATER QUALITY CERTIFICATION APPLICATIONS
2605 DETERMINING WHETHER A PROPOSED PROJECT IS WATER-DEPENDENT OR HAS NO PRACTICABLE ALTERNATIVE
2606 AVOIDANCE AND MINIMIZATION ANALYSES
2607 MITIGATION
2608 MITIGATION PLAN
2609 BONDING AND SECURITY REQUIREMENTS
2610 IMPLEMENTATION OF APPROVED MITIGATION PLAN, MAINTENANCE, AND MONITORING REQUIREMENTS
2611 DISTRICT WETLAND AND STREAM MITIGATION TRUST FUND PAYMENT

2612 PUBLIC NOTICE AND REVIEW OF WETLAND AND STREAM PERMIT APPLICATIONS
2613 PERMIT AND CERTIFICATION DECISION AND APPEAL
2614 WETLAND AND STREAM PERMIT MODIFICATION
2615 SUSPENSION AND REVOCATION OF PERMIT
2616 WETLANDS OF SPECIAL CONCERN
2699 DEFINITIONS

2600 GENERAL PROVISIONS

2600.1 The purpose of this chapter is to provide for the management and protection of wetlands and streams in the District, consistent with the following:

(a) The District of Columbia Wetland Conservation Plan, which establishes goals of no net loss in the acreage and function of wetlands, and an eventual overall net gain;

(b) The District of Columbia Fisheries and Wildlife Omnibus Act of 2016, which designated wetlands, fish and wildlife habitat conservation areas, and frequently flooded areas as critical areas to be protected, conserved, or enhanced; and

(c) The Chesapeake Bay Watershed Agreement of 2014, specifically the goal to restore, enhance, and protect a network of land and water habitats to support fish and wildlife, and to afford other public benefits, including water quality, recreational uses, and scenic values across the watershed.

2600.2 No person shall conduct a regulated activity in a wetland or stream unless the activity is exempt under § 2601 or conducted pursuant to a wetland and stream permit or water quality certification in accordance with § 2600.4.

2600.3 Notwithstanding any provision of this chapter or Chapter 25, a person who has submitted an application for a water quality certification pursuant to section 401 of the CWA (33 U.S.C. § 1341) before the effective date of these emergency rules shall not be subject to the provisions of this chapter or Chapter 25 for the regulated activity that was the subject of the application.

2600.4 A person conducting a regulated activity in a wetland or stream shall obtain one of the following:

(a) For an activity conducted in a wetland or stream that is also determined to be waters of the United States, a Clean Water Act (CWA) section 404 permit issued by the U.S. Army Corps of Engineers (33 U.S.C. § 1344), and a District water quality certification of that permit under section 401 of the CWA (33 U.S.C. § 1341); or

(b) For an activity conducted in a wetland or stream that is not waters of the United States, a District wetland and stream permit issued by the Department.

2600.5 The Department shall not issue a wetland and stream permit under this chapter or water quality certification for a regulated activity under section 401 of the CWA unless the applicant demonstrates to the satisfaction of the Department that:

(a) The proposed project is either water-dependent, or is not water-dependent but has provided justification that no practicable alternative exists under the criteria in § 2605;

(b) The regulated activity will first avoid and then minimize impacts to wetlands and streams based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria in § 2606; and

(c) The applicant has developed and implemented or will implement mitigation plans and practices under the criteria in §§ 2607, 2608, 2609, 2610, and 2611.

2600.6 The Department shall not issue a wetland and stream permit or water quality certification for a regulated activity if it:

(a) Causes or contributes to, after consideration of disposal site dilution and dispersion, violations of any applicable District water quality standard;

(b) Violates any applicable toxic effluent standard or prohibition under CWA § 307 (33 U.S.C. § 1317); or

(c) Jeopardizes the continued existence of a species listed as threatened or endangered under the federal Endangered Species Act, 16 U.S.C. § 1531 *et seq*., or results in the destruction or adverse modification of critical habitat of such species.

2600.7 Unless otherwise specified in a District wetland and stream permit or water quality certification issued by the Department, no regulated activity shall cause or contribute to significant degradation of wetlands or streams, including an individual or cumulative impact that:

(a) Degrades aquatic or semi-aquatic ecosystem populations, diversity, productivity, or stability;

(b) Adversely affects the biological, chemical, or physical properties of a wetland or stream;

(c) Degrades habitat for aquatic or semi-aquatic wildlife, fish, shellfish, or plants; or

(d) Jeopardizes the continued existence of a species of greatest conservation need or results in the destruction or adverse modification of habitat of such species.

2600.8 Persons conducting regulated activities within wetlands and streams shall:

(a) Conduct the regulated activity so as not to alter or impact the habitats of species of greatest conservation need;

(b) Conduct the regulated activity so as not to restrict or impede the passage of normal high water flows;

(c) Conduct the regulated activity so as not to restrict or impede the movement of wildlife indigenous to the wetland or adjacent water;

(d) Adhere to time-of-year restrictions as required by the Department under 21 DCMR § 1405;

(e) Avoid any disturbances in breeding areas for migratory waterfowl and species of greatest conservation need;

(f) Maintain the hydrologic regime of District waters impacted by the regulated activity;

(g) Place materials in a location and manner that does not impact surface or subsurface water flow into or out of District waters;

(h) Use only backfill that is free of waste metal products, debris, toxic material, contaminated material, or any other deleterious substance;

(i) Place heavy equipment on mats, or suitably design the equipment to prevent damage to wetlands and soil compaction;

(j) For installation of utility lines or repairs to utility lines, ensure that post-construction grades and elevations of wetlands and stream bed and banks are the same as original grades and elevations;

(k) Avoid significant individual and cumulative impacts to wetlands of special concern; and

(l) Manage runoff to prevent discharge of untreated stormwater into District waters.

2601 ACTIVITIES EXEMPT FROM THIS CHAPTER

2601.1 The following activities are exempt from the permitting requirements of this chapter:

(a) Any proposed regulated activity conducted by a person who received a federal Clean Water Act (CWA) section 404 permit issued by the U.S. Army Corps of Engineers (33 U.S.C. § 1344), and a District water quality certification of that permit under section 401 of the CWA (33 U.S.C. § 1341) before the effective date of these regulations;

(b) Invasive species eradication, mowing, or other forms of weed control in existing public utility rights-of-way;

(c) Activities that disturb less than fifty square feet (50 ft^2) of land and do not impact waters of the United States.

2601.2 The following activities are exempt from the mitigation requirements of this chapter:

(a) Submerged aquatic vegetation restoration and enhancement activities;

(b) Stream and wetland enhancement, restoration, and creation activities that are not related to mitigation, provided:

(1) The activities do not impact the biological, chemical, or physical properties of the wetland or stream; and

(2) The project is not located within a wetland of special concern.

(c) The installation of floating recreational docks that will be removed within six (6) months of installation.

2601.3 A person may perform emergency work to protect life, limb or property, or may perform emergency repairs, prior to obtaining a wetland and stream permit or water quality certification, provided that:

(a) The person performing the work or repairs notifies the Department by telephone or email within twenty-four (24) hours or the next business day after learning of the condition requiring emergency work or emergency repairs;

(b) The person submits an application for a District Wetland and Stream Permit or a water quality certification within thirty (30) days of beginning the emergency work or emergency repairs;

(c) For an activity conducted in a wetland or stream that is also determined to be waters of the United States, the person conducting the activity follows any emergency procedures established by the U.S. Army Corps of Engineers in accordance with 33 C.F.R. § 325.2(e)(4); and

(d) The person performing the emergency work or emergency repairs completes the work or repairs, and, once the wetland or stream permit or water quality certification is issued, the person fulfills any mitigation required by the permit or certification.

2602 APPLICATION REQUIREMENTS FOR A DISTRICT WETLAND AND STREAM PERMIT OR A SECTION 401 WATER QUALITY CERTIFICATION

2602.1 An applicant seeking a water quality certification shall submit an electronic copy of the signed joint permit application form accessible on U.S. Army Corps of Engineers' website, along with supporting documents that were submitted to the U.S. Army Corps of Engineers for a CWA § 404 Permit, to the Department's submittal database.

2602.2 An applicant seeking a District wetland and stream permit shall submit to the Department's submittal database a signed application on a form provided by the Department.

2602.3 An applicant for a District wetland and stream permit or water quality certification shall submit the following information to the Department's submittal database, if not previously submitted pursuant to § 2602.1:

(a) A detailed description of the proposed project including:

(1) Project purpose;

(2) A description of facilities to be constructed or modified and work to be performed that would impact wetlands, streams, or other District waters;

(3) A description of the size and location of the proposed project site;

(4) A copy of either the approved jurisdictional determination letter from the U.S. Army Corps of Engineers or the preliminary jurisdictional determination form;

(5) The area (in square feet), length (in feet), and type(s) of streams and wetlands proposed to be impacted, including the area or length determined to be waters of the United States; and

(6) The applicant's proposed mitigation plan.

(b) A wetland and stream delineation report for the site, with supporting documents, that delineates all wetlands and streams within the project vicinity and includes:

(1) Wetland determination data forms for each wetland community in accordance with U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and Regional Supplements, accessible on the U.S. Army Corps of Engineers' website: https://www.nab.usace.army.mil/Missions/Regulatory/Jurisdictional-Determinations;

(2) Topographic mapping; and

(3) Survey mapping.

(c) A site plan that includes the following information:

(1) Wetland boundaries, as marked or flagged in the field, based on field delineation and delineated in accordance with the U.S. Army Corps of Engineers Wetland Delineation Manual and its Regional Supplements;

(2) Wetland and upland data point locations delineated in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual and Regional Supplements;

(3) Stream top-of-bank boundaries and ordinary high water mark boundaries, as marked or flagged in the field, based on field delineation;

(4) Locations of springs, seeps, vernal pools, and other aquatic resources;

(5) Locations of existing and proposed structures or utilities;

(6) Proposed locations of regulated activities and limits of disturbance;

(7) Property lines of any parcels impacted by the regulated activity;

(8) Locations and number of soil or sediment investigations and any soil or sediment contamination issues;

(9) Locations and number of groundwater investigations and any contamination issues; and

(10) Locations of project sites on District Flood Insurance Rate Map (FIRM).

(d) A cross-sectional drawing(s) of each proposed impact area that includes at a minimum:

(1) Graphic scale;

(2) Existing structures;

(3) Existing and proposed elevations;

(4) Limits of wetlands and streams;

(5) Flow direction;

(6) For non-tidal streams, ordinary high water mark and top-of-bank;

(7) For tidal streams, mean low water and mean high water lines;

(8) Impact limits; and

(9) Location of all existing structures and proposed structures.

(e) Profile drawing(s) with the information listed in paragraph (d), if required by the Department to demonstrate minimization of impacts;

(f) A list of each type of wetland proposed to be impacted, identified by its Cowardin classification, and for each classification of wetland:

(1) The area of each proposed wetland impact in square feet; and

(2) The total area of all proposed impacts in square feet.

(g) A list of individual stream impacts as follows:

(1) By length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; and

(2) In square feet to the nearest whole number.

(h) Representative photographs of the impacted wetland or stream, riparian buffers, data point locations, and project area;

(i) A completed environmental impact screening form and review documents, if required by the District of Columbia Environmental Policy Act of 1989, effective October 18, 1989 (D.C. Law 8-36; D.C. Official Code § 8-109.01 *et seq*.), and by 20 DCMR § 7201;

(j) Names of adjacent property owners;

(k) A photo location map identifying the direction of each photo taken;

(l) A functional assessment of the wetlands and streams directly or indirectly, temporarily or permanently impacted by the proposed activity;

(m) An avoidance and minimization analyses, as specified in § 2606; and

(n) A mitigation plan, as specified in § 2608.

2602.4 The Department may request evidence or certification that material is free from toxic contaminants prior to disposal or use for fill.

2602.5 The applicant shall certify the truth, accuracy, and completeness of all the information in the application.

2602.6 The application shall be signed by the applicant or, if the applicant is not an individual, by an authorized agent of the applicant.

2602.7 If the applicant is not the legal property owner, the application form shall also be signed by the legal property owner or an authorized agent of the owner.

2602.8 An applicant shall flag the wetland boundaries in the field in accordance with the Corps of Engineers Wetlands Delineation Manual and its Regional Supplements.

2602.9 An applicant shall maintain the boundary flags until the Department and U.S. Army Corps of Engineers have reached a jurisdictional determination decision.

2602.10 An applicant for a wetland and stream permit, water quality certification, or a modification of a wetland and stream permit or a water quality certification, shall pay a nonrefundable application fee at the time the applicant submits the application to the Department, as specified in § 2604.

2602.11 For purposes of this section, the term "authorized agent" shall mean:

(a) For a corporation, partnership, limited liability company, association, trust, or other business entity, a governor as defined in D.C. Official Code § 29-101.02; and

(b) For the District or federal government, a legally authorized official.

2603 APPLICATION PROCESSING

2603.1 An application is complete if:

(a) It contains all of the information required by §§ 2602, 2605, 2606, 2607, and 2608;

(b) The application fees set forth in § 2604 are paid in full; and

(c) The Department determines that all the information submitted is sufficient for the Department to process the application.

2603.2 If an application is incomplete, the Department may:

(a) Notify the applicant in writing or through the Department's submittal database of any items or additional information that are required; or

(b) Return the application.

2604 FEE SCHEDULES FOR DISTRICT WETLAND AND STREAM PERMIT AND WATER QUALITY CERTIFICATION APPLICATIONS

2604.1 Any person applying for a wetland and stream permit or water quality certification shall pay the fees described in this section.

2604.2 The Department shall adjust the fees in this section for inflation annually, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics. To perform this adjustment, the Department shall increase each fee by the percentage, if any, by which the Urban Consumer Price Index for June of the calendar year exceeds the Urban Consumer Price Index for June of the previous year. Each inflation adjustment shall be posted to the Department's website.

2604.3 An applicant for a permit, water quality certification, or modification of a permit or a water quality certification shall pay the appropriate nonrefundable application fee in Table 1 at the time the applicant submits the application to the Department.

Table 1. DOEE Nonrefundable Application Fees

Wetland and Stream Permit Review and/or Water Quality Certification Review	$750.00
Minor Permit/Certification Modification (projects with impacts < 5,000 SF)	$750.00
Major Permit/Certification Modification (projects with impacts ≥ 5,000 SF)	$1,500.00
Request DOEE to perform Presence/Absence Survey	Desktop Review $50.00

Request DOEE to perform Presence/Absence Survey	Site Visit $75.00 for first hour plus $100 for each additional hour

2604.4 An applicant for a permit, water quality certification, or modification of a permit or a water quality certification shall pay the appropriate supplemental fee in Table 2 after the Department has reviewed and commented on the application but prior to the issuance of the permit or certification.

Table 2. Supplemental Fees Based on Proposed Impact

< 5,000 SF	$1,500.00
≥ 5,000 SF to < ¼ acre	$3,000.00
≥ ¼ acre to < ½ acre	$4,500.00
≥ ½ acre to < ¾ acre	$6,000.00
≥ ¾ acre to < 1 acre	$7,500.00
≥ 1 acre	$9,000.00

2604.5 An applicant for a permit, water quality certification, or modification of a permit or a water quality certification shall pay any appropriate additional fees in Table 3 shall be paid after the Department has reviewed and commented on the application but prior to the issuance of the permit or certification.

Table 3. Additional Fees

Permittee-Responsible Mitigation Plan Review	$1,580.00
Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PEM[1]/PSS[2] Wetlands and/or Streams	$3,950.00
Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PFO[3] Wetlands	$6,900.00
Contaminated soil, sediment, groundwater, or surface water within project site	$1,300.00

[1]PEM - Palustrine emergent wetland
[2]PSS – Palustrine scrub shrub wetland
[3]PFO – Palustrine forested wetland

2605 DETERMINING WHETHER A PROPOSED PROJECT IS WATER-DEPENDENT OR HAS NO PRACTICABLE ALTERNATIVE

2605.1 The Department may issue a permit or certification for an activity only if the Department finds that:

(a) The proposed project is water-dependent; or

(b) The proposed project is not water-dependent and has no practicable alternative, as specified in this section.

2605.2 The Department will apply the following criteria to determine whether a proposed project is water-dependent:

(a) Whether an alternate water source is available for use, including surface water or groundwater, that may result in less adverse impacts to wetlands or streams; and

(b) Whether the use of a wetland or stream would only enhance a project rather than function as an essential element of a project.

2605.3 In determining whether the proposed project requires access to a wetland or stream as a central element of its basic project purpose, the Department will consider whether access could be accomplished at another location that would first avoid, or if avoidance is not possible then minimize, impacts to wetlands or streams.

2605.4 For a multiple-use project that has both water-dependent and non-water dependent features, the Department will determine the features that are water dependent.

2605.5 In determining whether the proposed project is water dependent, the Department may consider, but is not bound by, the applicant's description of the basic project purpose.

2605.6 If the project is not water dependent, the applicant shall demonstrate to the satisfaction of the Department that all practicable alternatives have been analyzed, and that the proposed regulated activity has no practicable alternative.

2605.7 In determining whether the proposed regulated activity has a practicable alternative, the Department may consider the following:

(a) Whether the basic purpose of the project can be reasonably accomplished using one or more other sites in the same general area as the proposed project that would avoid or reduce impacts on wetlands, streams, and other District waters;

(b) Whether a reduction in the size, scope, configuration, or density of the proposed project would accomplish the basic purpose of the project;

(c) Whether an alternative design, including a no-build alternative that would avoid or reduce impacts on wetlands, streams, and other District waters, would accomplish the basic project purpose;

(d) Whether the applicant has made a good-faith effort to address site constraints such as inadequate zoning, infrastructure, or parcel size that

caused an alternative to the proposed regulated activity and project to be rejected; and

(e) Whether the regulated activity is necessary for the project to meet a demonstrated public benefit.

2605.8 In determining whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area as the proposed project that would avoid or result in less adverse impact to wetlands or streams, as specified in § 2605.7(a):

(a) The Department may consider the applicant's definition of the general area, but may make an independent determination;

(b) The applicant shall prove to the Department's satisfaction that the applicant has examined at least four (4) alternative sites, including a no-action alternative, for the proposed project during the initial planning phase; and

(c) The applicant may not exclude an alternative site from consideration during the initial planning phase because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project.

2605.9 In determining whether an applicant has made a good-faith effort to address constraints, as specified in § 2605.7(d), the Department may consider any pertinent information, including:

(a) Correspondence or other written documentation between an applicant and a local authority, including a request for a special exception or other zoning variance;

(b) Evidence of efforts to modify the local infrastructure, including future planned expansions or redesign of the project because of a potential impacts to wetlands or streams; and

(c) Written documentation of efforts undertaken to acquire another site or to reconfigure the proposed project, such as the reduction of building footprints by compensating vertical expansion or the use of multilevel parking garages to address the constraint.

2605.10 In determining whether the regulated activity is necessary for the proposed project to meet a demonstrated public need, as specified in § 2605.7(e), the Department may consider the following:

(a) Whether the proposed project promotes the public health, safety, or welfare; and

(b) The ecological functions of, and economic value associated with, the wetland, stream, or other water to be impacted, including the benefits and economic value provided to the general public by the wetland or stream, and the ability of the wetland or stream to continue to provide those identified functions and benefits to the general public.

2605.11 A permittee shall not change the use of a project determined to be water-dependent to a non-water-dependent use unless the permittee files a new application and receives authorization for the modified use.

2606 AVOIDANCE AND MINIMIZATION ANALYSES

2606.1 The Department may issue a permit or certification for an activity only if the Department finds that the applicant has demonstrated that the regulated activity will avoid, or if avoidance is not feasible, will minimize, impacts to wetlands and streams.

2606.2 When evaluating the extent to which a proposed project will avoid or minimize direct and indirect impacts to wetlands and streams, the Department may consider relevant factors including the following:

(a) Reduction in acreage of wetlands and streams impacted by a regulated activity;

(b) Harm to a federally threatened or endangered species or species of greatest conservation need, or to the critical habitat of these species;

(c) Impact on movement of wildlife indigenous to wetlands and streams;

(d) Ability of the wetlands or streams to continue to support and provide habitat for those species of wildlife using the area, if the proposed regulated activity were authorized;

(e) Hydrologic regime of the areas upstream and downstream of the area of impact, including headwaters;

(f) Functions of the impacted and adjacent wetlands and streams within the watershed, and an analysis of potential impacts of the applicant's action on adjacent wetlands, streams, and other waters within the watershed;

(g) Passage of normal and expected high flows, the relocation of District waters, and stream diversion;

(h) Subsurface water and groundwater flow into or out of any wetland area;

(i) Presence of fish or aquatic wildlife spawning areas, including submerged aquatic vegetation beds;

(j) Presence of adjacent areas of habitat having significant plant or wildlife function or value;

(k) Cumulative impact to wetlands, streams, and other District waters;

(l) The cost of fulfilling potential mitigation requirements based on the proposed project configuration or design versus an alternative project configuration or design;

(m) The basic project purpose of the proposed project and how the basic project purpose relates to placement, configuration, and density of the wetland;

(n) The location of any existing structural and natural features that may dictate the placement or configuration of the proposed project;

(o) The applicant's efforts to:

(1) Modify the size, scope, configuration, or density of the project to avoid and minimize impacts to wetlands and streams;

(2) Remove or address site constraints, including zoning, infrastructure, access, and natural features, and otherwise avoid or minimize impacts; and

(3) Confine unavoidable impacts to the fringe or periphery of the wetlands and streams.

2606.3 If the Department determines that an applicant has not complied with the requirement to avoid and minimize impacts to wetlands, streams, and other District waters, the Department will provide to the applicant, in writing, its objections to the project.

2606.4 Within six (6) months of receipt of the Department's objections, the applicant shall submit an amended project proposal addressing the Department's objections, withdraw the application, or request an extension of time to resubmit an amended project proposal addressing the Department's objections, unless the Department allows a longer period of time.

2606.5 If the applicant fails to respond to the Department's objection in accordance with § 2606.4, the statement of objections shall constitute a denial.

2607 MITIGATION

2607.1 The objective of mitigation is to offset functional, temporal, and permanent environmental losses resulting from unavoidable impacts to wetlands and streams authorized by wetland and stream permits and water quality certifications.

2607.2 An applicant must propose and provide justification for an appropriate mitigation project to offset unavoidable impacts to wetlands or streams and obtain the Department's approval of a mitigation plan in accordance with § 2608.

2607.3 Mitigation for wetland and stream impacts is not required for the following regulated activities:

(a) Activities exempted in § 2601; and

(b) Activities which result in temporary impacts to wetlands or streams.

2607.4 A mitigation project:

(a) Shall comply with the District's surface water quality standards;

(b) As a source of its hydrology, may only receive stormwater runoff from stormwater management practices required pursuant to chapter 5 of this title or by a permit issued pursuant to CWA § 402 (33 U.S.C. § 1342), provided that the stormwater runoff meets District's surface water quality standards before entering the wetlands or streams; and

(c) Shall not be constructed to serve as a stormwater management best management practice for the purpose of compliance with 21 DCMR Chapter 5.

2607.5 An applicant shall complete mitigation, to the maximum extent practicable, in advance of or concurrent with the approved regulated activity. The Department may require additional compensatory mitigation to offset temporal losses of stream and wetland functions that will result from the permitted activity.

2607.6 The mitigation mechanism shall be permittee-responsible mitigation or, if authorized in accordance with 2607.18, payment into the District of Columbia's Wetland and Stream Mitigation Trust Fund.

2607.7 An applicant may perform permittee-responsible mitigation using creation, restoration, enhancement, or preservation of wetlands or streams, or a combination any of those methods.

2607.8 Mitigation projects may be located on multiple parcels of land.

2607.9 Mitigation projects shall be located:

(a) In the District;

(b) Where they are most likely to successfully replace functions lost as a result of the project, taking into account habitat diversity, habitat connectivity, hydrology, trends in land use, and compatibility with adjacent land uses; and

(c) According to the following geographic location, in order of priority, unless otherwise determined by the Department:

(1) On-site where the wetland or stream impact(s) will occur;

(2) In the drainage basin where the wetland or stream impact(s) will occur;

(3) In the sub-watershed where the wetland or stream impact(s) will occur;

(4) In the watershed where the wetland or stream impact(s) will occur; or

(5) Outside the watershed where the wetland or stream impact(s) will occur.

2607.10 Except as provided in §§ 2607.18 the permittee shall install and maintain the mitigation project.

2607.11 In selecting sites for mitigation within geographic regions, an applicant shall avoid, whenever possible, the following types of sites:

(a) Forested lands;

(b) Lands known to have soil and groundwater contamination;

(c) Lands that have or will have limited access for wildlife or aquatic life because of traffic or other human activities;

(d) Lands that are existing or potential habitat for any species that are:

(1) Listed as endangered or threatened by the Department or the U.S. Fish and Wildlife Service; or

(2) Considered to be locally unusual, rare, or identified as a species of greatest conservation need in the District Wildlife Action Plan, accessible on the Department's website; and

(e) A site designed or constructed to remove or treat pollutants from stormwater runoff.

2607.12 The applicant shall calculate mitigation requirements as follows:

(a) The minimum mitigation ratio, between the area of wetland or stream mitigation and the area of wetlands or streams impacted, shall be 1:1; and

(b) The mitigation shall:

(1) Where appropriate functional or condition assessment methods or other suitable metrics are available, replace lost wetland or stream functions; and

(2) Where functional or condition assessment methods or other suitable metrics are not available, mitigate impacts using the mitigation ratios in § 2607.14 and § 2607.15.

2607.13 A mitigation ratio shall be expressed as:

(a) A relationship between the area of wetland mitigation and the area of wetlands impacted; or

(b) A relationship between the area of stream mitigation and the area of streams impacted.

2607.14 The mitigation ratios for impacts to streams, when functional or condition assessment methods or other suitable metrics are not available, shall be as follows:

Type of Stream	Restoration Ratio	Preservation and Enhancement Ratio	District Wetland and Stream Mitigation Trust Fund Payment
Ephemeral	1:1	1.5:1	1.5:1
Intermittent	2:1	3:1	3:1
Perennial	2:1	3:1	3:1

2607.15 The mitigation ratio for impacts to wetland areas, when functional or condition assessment methods or other suitable metrics are not available, shall be as follows:

Wetland Type	Mitigation Method		
	Creation/Restoration	Enhancement and Preservation	District Wetland and Stream Mitigation Trust Fund Payment
Emergent	1:1	1.5:1	1.5:1
Shrub-scrub	2:1	3:1	3:1
Forested	2:1	3:1	3:1
Emergent Wetland of Special Concern	2:1	3:1	3:1
Shrub-scrub Wetland of Special Concern	3:1	4.5:1	4.5:1
Forested Wetland of Special Concern	3:1	4.5:1	4.5:1

2607.16 The Department may accept reduced mitigation requirements if the regulated activity provides a significant environmental benefit as determined by the Department.

2607.17 The Department shall require higher mitigation ratios for activities conducted without or prior to obtaining a permit or certification required by this chapter, as follows:

Resource Type	Restoration/ Creation Ratio	Preservation and Enhancement Ratio	District Wetland and Stream Mitigation Trust Fund Payment
Stream	3:1	4:1	4:1
Wetland	4:1	5:1	5:1

2607.18 A permittee may fulfill the mitigation requirement for damage to or destruction of habitat from dredge-and-fill or construction activity through payment into the District's Wetland and Stream Mitigation Trust Fund if:

(a) Permittee-responsible mitigation is not practicable based on the justification and a determination of the considerations provided in accordance with §§ 2607.19 and 2607.20; or

(b) Cumulative impacts for a single project total less than or equal to two thousand five hundred (2,500) square-feet.

2607.19 If an applicant proposes payment into the District's Wetland and Stream Mitigation Trust Fund, the applicant shall demonstrate to the satisfaction of the Department that all practicable mitigation alternatives have been analyzed and that permittee-responsible mitigation is not practicable.

2607.20 In determining whether payment into the District's Wetland and Stream Mitigation Trust Fund is justified and permittee-responsible mitigation is not practicable, the Department will consider the following:

(a) Whether the applicant has thoroughly examined the feasibility of at least four (4) mitigation sites;

(b) Whether mitigation can reasonably be accomplished using one (1) or more other sites in the District that were not examined by the applicant;

(c) Whether the applicant has made a good-faith effort to address site constraints, such as inadequate zoning, infrastructure, or parcel size, that caused an alternative to the proposed mitigation site alternatives to be rejected;

(d) Correspondence or other written documentation between an applicant and alternative site landowner(s) that demonstrates the site(s) is unsuitable or unavailable for purchase during the site selection process; and

(e) Whether the applicant has provided scientific evidence to determine a site is not suitable for mitigation.

2608 MITIGATION PLAN

2608.1 If a proposed project results in unavoidable impacts to wetlands or streams after first trying to avoid and then attempting to minimize such impacts, the applicant shall develop and implement a mitigation plan.

2608.2 The applicant shall submit the mitigation plan as part of the permit or certification application process. The mitigation plan shall include the following information:

(a) Names, addresses, and telephone numbers of the principals associated with project implementation;

(b) A proposal, if applicable, to use the District's Wetland and Stream Mitigation Trust Fund, consistent with §§ 2607.19 and 2607.20, to fulfill mitigation requirements;

(c) A description of mitigation projects proposed to fulfill the mitigation requirement, including the proposed source of hydrology and project

location maps showing the geographic relationship between the area of potential impacts and the proposed mitigation sites;

(d) A description of the mitigation project objectives, including the wetland or stream type(s) and amount(s) of restoration, creation, enhancement and preservation that will be provided, and the manner in which the ecosystem functions of the mitigation project will address the needs of the watershed;

(e) A description of the factors considered during the site selection process, including consideration of watershed needs, on-site alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining wetland creation, and/or stream or wetland restoration, enhancement, or preservation at the mitigation project site;

(f) A description of the legal arrangements, including site ownership, and site protection legal instruments, such as environmental covenants, that will be used to ensure the long-term protection of the mitigation project site;

(g) A description of baseline information on the ecological characteristics of the proposed mitigation project site. Baseline information may include the following:

(1) Descriptions of historic and existing plant communities;

(2) Historic and existing hydrology and soil conditions;

(3) Map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s);

(4) Other site characteristics appropriate to the type of resource being proposed as compensation;

(5) A map of the existing conditions at the mitigation site(s) that includes streams and wetlands with each type labeled, floodplain extent, ordinary high water elevation, normal water elevation, location of culverts, location of outfalls, location of tributaries, topographic features, thalweg, boundaries of areas dominated by invasive plant species, proposed protective buffers, and the proposed boundary of preservation; and

(6) A report on the delineation of wetlands and streams on the proposed mitigation project site(s).

(h) A determination of mitigation ratios based on the type and functions of the wetland or stream. For permittee-responsible mitigation, this should include an explanation of how the mitigation project will provide the required

mitigation for unavoidable impacts to wetlands and streams resulting from the regulated activity;

(i) A mitigation work plan with detailed written specifications and work description for the mitigation project, including the following:

(1) Geographical boundaries and plan view scaled drawings that include the following:

(i) A vicinity map showing the mitigation project location, existing land use, and zoning;

(ii) The location, type, and area of proposed wetland or stream mitigation activities;

(iii) The proposed location of stockpile areas or staging areas;

(iv) The location of sediment and erosion control practices and disturbance areas;

(v) For stream restoration, the location of proposed ordinary high water elevation, normal water elevation, topographic features, thalweg, sinuosity measurements, and habitat enhancement features;

(vi) Detailed grading plans;

(vii) The limits of cut and fill areas;

(viii) The extent and acreage of existing vegetation and proposed vegetation planting zones;

(ix) The targeted canopy cover;

(x) The location of riparian buffer areas and plant species to be included in the buffer area;

(xi) The proposed location of stockpile areas or staging areas;

(xii) The locations of all areas used to stage machinery, equipment, or supplies;

(xiii) The proposed sources of borrow materials;

(xiv) Total rock fill to be used for habitat/stabilization measures;

(xv) Flow rate, hydrologic flow regime, and storm event flow characteristics;

(xvi) The proposed location, spacing, and type of propagules for each plant species; and

(xvii) The location of photo stations, monitoring wells, vegetation sampling points, and reference wetlands or streams (if available).

(2) Cross-section drawings of mitigation and buffer areas showing existing and proposed final site conditions including grade, elevation, slope, and expected maximum and normal water depths, and natural channel design measurements;

(3) A longitudinal profile of existing and proposed land surface;

(4) A description of how creation, restoration, enhancement, or, if applicable, preservation will replace lost functions;

(5) A description of creation, restoration, or enhancement techniques and site grading;

(6) A construction schedule that includes estimated start, completion dates, and planting timeline;

(7) A hydrologic analysis that includes:

(i) The proposed location of groundwater monitoring wells to collect groundwater data;

(ii) Estimated elevation and quality of surface water and groundwater as measured from the soil surface at a frequency and duration approved by the Department as part of its approval of the mitigation plan;

(iii) Sources of hydrology, such as groundwater, precipitation, and surface water, over various seasons of the year;

(iv) Reliability of the hydrologic sources throughout the various seasons of the year;

(v) Relevant precipitation data; and

(vi) Water budget analysis for a proposed wetland based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year;

(8) A description of substrate conditions for:

(i) Existing soil and substrate conditions; and

(ii) Soil and substrate amendments needed to meet hydric soil characteristics and maintain the specified aquatic or plant species;

(9) Native vegetation or plants to be planted with the following information:

(i) The scientific and common names of plant species;

(ii) Planting dates for each species according to propagation method; and

(iii) Planting stock fertilizer or soil amendment requirements for the entire five (5) year to ten (10) year monitoring period;

(j) An invasive plant monitoring plan establishing responsibility for the removal of invasive plants until permanent establishment of the wetland or stream system and its component parts;

(k) A maintenance plan, including a description and schedule of maintenance requirements to ensure the continued viability of the mitigation site once monitoring is completed;

(l) Performance standards to measure the effectiveness of the mitigation plan at achieving mitigation goals and offsetting the authorized impacts to wetlands, which shall:

(1) Be ecologically-based, objective, quantitative, verifiable, and relate to the specific goals of the mitigation plan;

(2) Include measures to ensure achievement of plant survival criteria in § 2610.6; and

(3) Describe criteria for measuring interim progress and determining whether the mitigation site is developing as expected.

(m) Monitoring requirements describing parameters to be monitored in order to determine if the mitigation project is meeting performance standards and, if

adaptive management is needed, a methodology for monitoring each parameter and a schedule for monitoring and reporting monitoring results to the Department;

(n) A long-term management plan to ensure the long-term sustainability of the resource that describes how the mitigation project will be managed after performance standards have been achieved, including long-term financing mechanisms and responsibility for long-term management;

(o) An adaptive management plan to address failure to achieve or maintain performance standards, including identification of the party or parties responsible for implementing adaptive management measures;

(p) A description of financial assurances that will be provided in accordance with § 2609 and how these assurances are sufficient to ensure that the mitigation project will be successfully completed in accordance with its performance standards; and

(q) Other information the Department may require as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.

2608.3 Proposed mitigation projects will be evaluated by the Department to assess:

(a) The likelihood for ecological success, functional uplift, and sustainability; and

(b) The location of the mitigation project site relative to the impact site and the function of both the mitigation project site and impact site in the watershed.

2608.4 In determining whether proposed mitigation adequately replaces wetland or stream functions and area, the Department will consider the following:

(a) Scope and extent of the mitigation;

(b) Proximity of the mitigation to the wetland or stream;

(c) Technical merits of the mitigation and its likelihood of long-term success;

(d) Temporal losses of wetland or stream functions and ecological, recreational, and aesthetic values;

(e) Adverse impact of the mitigation on natural resources; and

(f) Relationship of the mitigation to ongoing natural resource management activities.

2608.5 The Department may not approve a mitigation plan that includes invasive plants.

2608.6 The Department may not approve a mitigation plan that includes a stormwater management practice required pursuant to chapter 5 of this title or a permit issued pursuant to CWA § 402 (33 U.S.C. § 1342) as part of the mitigation project.

2608.7 The Department may approve or disapprove the mitigation plan as part of the permit application decision.

2608.8 If the Department disapproves the mitigation plan, the Department will provide guidance to the applicant on the changes necessary for approval of the mitigation plan.

2608.9 An applicant shall provide the Department or its designee access to the mitigation site to inspect during business hours.

2609 BONDING AND SECURITY REQUIREMENTS

2609.1 The bonding requirements of this section do not apply to agencies of the District or federal government.

2609.2 Except as provided in 2609.4, the applicant shall file with the Department a surety bond in a form approved by the Department before a request for a permit or certification will be approved.

2609.3 The bond shall be payable to the Department and will remain in effect until the permittee's successful completion of the mitigation project according to an approved mitigation plan.

2609.4 Instead of a surety bond, the Department may accept one of the following alternate forms of security:

(a) An irrevocable letter of credit in an amount equivalent to the required bond, issued by a bank or financial institution organized or authorized to do business in the District, that expressly states that the total sum is guaranteed to be available and payable directly to the Department on demand in the event of forfeiture by the applicant; or

(b) The fulfillment of mitigation requirements before initiation of the permitted activity, if that permitted activity will results in impacts to wetlands or streams.

2609.5 If the applicant supplies an alternate form of security pursuant to § 2609.4, the applicant shall submit documentation of that form of security to the Department.

2609.6 A bond or letter of credit shall not expire until construction of the mitigation project and the monitoring and maintenance requirements have been successfully completed pursuant to the approved mitigation plan.

2609.7 The amount of the bond shall be the cost to acquire the land and provide mitigation, which shall be determined by the Department based on the prevailing market values of land in the District.

2609.8 An applicant may request reduction of the bond amount by submitting a written request to the Department with a justification for reducing the bond amount, including estimated or actual costs to complete the mitigation project, and any other relevant information.

2609.9 The Department will determine whether a lesser amount is sufficient to cover the cost of mitigation by considering the following:

(a) The number of acres or linear feet to be mitigated;

(b) The current cost of land in the area of the mitigation site;

(c) The proposed method of mitigation;

(d) The type and value of the wetland to be created or type and functions of the stream to be created or restored; and

(e) Any other relevant factors, including the likelihood of success of the project.

2609.10 The permittee's liability under a bond shall continue until the Department receives and approves an as-built plan for the mitigation project and the surety or financial institution receives written notice from the Department that construction of the mitigation project was successfully completed.

2609.11 A surety bond or alternate form of security shall not be canceled by the surety, bank, or other issuing entity unless the issuing entity notifies the Department and the permittee of its intent to cancel the bond or other alternate form of security, in writing, by registered mail, not less than ninety (90) calendar days before cancellation.

2609.12 At least forty-five (45) calendar days before the cancellation date indicated in a notice given pursuant to § 2609.11, the permittee shall file with the Department a commitment from a surety, bank, or other issuing entity to provide a substitute bond or other alternate form of security that will be effective on the cancellation date indicated in the notice.

2609.13 The bond or alternate form of security shall be subject to forfeiture upon:

(a) Revocation of a wetland and stream permit by the Department;

(b) Failure of the permittee to comply with an administrative order; or

(c) Failure to comply with any element of the approved mitigation plan and any approved modifications.

2609.14 The Department shall notify the permittee and the surety, bank, or other issuing entity of the Department's intention to initiate forfeiture proceedings in writing by certified mail.

2609.15 The permittee shall have thirty (30) calendar days from receipt of the notice of forfeiture to correct any deficiencies in compliance with the mitigation plan or otherwise show cause why the bond or other instrument should not be forfeited.

2609.16 If the permittee fails to correct any deficiencies or show cause as required in § 2609.15, the bond or other security shall be forfeited.

2609.17 The Department shall prohibit a permittee from conducting a regulated activity in a wetland or stream if the permittee previously forfeited any bond or alternate form of security under this chapter, unless:

(a) The permittee repays the Department the cost incurred by the Department in completing the mitigation project that is in excess of the forfeited bond or alternate form of security plus interest of one-and-one-half percent (1.5%) per month; or

(b) If the mitigation project is still not completed, the permittee completes the mitigation project at its expense according to the approved mitigation plan and any approved modifications.

2609.18 The Department may require the permittee to provide documentation of a long-term protection mechanism on the land where mitigation has occurred, in accordance with § 2610.14, before the permittee may release a bond or alternate form of security.

2610 IMPLEMENTATION OF APPROVED MITIGATION PLAN, MAINTENANCE, AND MONITORING REQUIREMENTS

2610.1 A permittee shall implement the approved mitigation plan within the time period required by the Department and specified in the mitigation plan.

2610.2 A permittee shall maintain and monitor all created, restored, and enhanced emergent wetlands, shrub-scrub wetlands, or streams for at least five (5) years.

2610.3 A permittee shall maintain and monitor created, restored, and enhanced forested wetlands for at least ten (10) years.

2610.4 The Department may require a longer monitoring period for wetlands or streams with slow development rates, such as bogs.

2610.5 Monitoring events must occur during the growing season and during a period with normal precipitation and groundwater levels.

2610.6 A permittee shall ensure that after five (5) years, greater than eighty-five percent (85%) of the site is vegetated by native species.

2610.7 In the case of a permittee who has proposed the use of natural re-vegetation as part of the creation, restoration, or enhancement project, after five (5) years, greater than eighty-five percent (85%) of the site shall be vegetated by native species similar to those found in the wetland lost or by a species composition agreed to by the Department.

2610.8 A permittee shall submit annual maintenance and monitoring reports for a minimum of five (5) years from the completion of the construction of the mitigation project to the Department, unless the permittee has received written notice from the Department that the maintenance and monitoring requirements have been fulfilled in less than five (5) years.

2610.9 The annual maintenance and monitoring reports shall include the following information:

(a) A description of how the mitigation project meets performance standards;

(b) Any change in status or performance from the previous year;

(c) Photographs of the mitigation project accurately representing the status of the project;

(d) The commercial source of planting stock whenever replanting is required;

(e) A description of any modifications that have been made or need to be made to implement the mitigation plan or plan component so as to meet the performance standards; and

(f) An as-built site design plan following completion of the mitigation project for year one (1) and year five (5).

2610.10 Upon presentation of appropriate credentials to the permittee or property owner, the Department may, consistent with section 205 of the Fisheries and Wildlife Omnibus Amendment Act of 2016, effective May 19, 2017 (D.C. Law 21-282; D.C. Official Code § 8-1731.05), enter the mitigation site at reasonable times during

construction, the required monitoring period, and afterwards to inspect the mitigation project and assess the long-term viability of the mitigation site.

2610.11 The permittee's maintenance and monitoring requirements shall be deemed to be fulfilled upon receipt of written approval notice from the Department.

2610.12 If the mitigation project fails to comply with survival criteria, the Department may, through written notification to the permittee, extend the required monitoring period for up to an additional three (3) years.

2610.13 If the created or restored wetland or stream does not meet the performance standards by the final monitoring year period, including any extensions, the permittee shall submit a new mitigation plan to the Department in accordance with §§ 2607 through 2610 and, upon Department approval, implement the new mitigation plan.

2610.14 The permittee shall ensure the long-term protection of the wetlands, streams, riparian buffers, and uplands that comprise the overall mitigation project through one of the following protection mechanisms:

(a) A conservation easement;

(b) Conveyance of the wetlands, streams, riparian buffers, and uplands that comprise the overall mitigation project to an organization or public agency capable of protecting the area in perpetuity;

(c) A restrictive covenant; or

(d) Another mechanism approved by the Department.

2610.15 For mitigation projects located on government property, long-term protection may be provided through facility management plans or integrated natural resources management plans.

2610.16 Any long-term protection mechanism shall include the following:

(a) Language granting the Department, including any successor agency, and its designee, access to the mitigation site for inspections;

(b) An absolute prohibition on the draining, dredging, removal, or filling of the created wetland site;

(c) Language that the restriction is binding on the grantor's personal representatives, heirs, successors, and assigns and runs with the land; and

(d) A provision requiring notification to the Department sixty (60) calendar days before any action is taken to void or modify the long-term protection mechanism.

2610.17 The long-term protection mechanism must, to the extent appropriate and practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the mitigation project.

2610.18 A permittee shall design mitigation projects, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved, using appropriate siting to ensure that natural hydrology and landscape context will support long-term sustainability, and minimizing the use of active engineering features, such as pumps.

2610.19 If active long-term management and maintenance, such as invasive plant species control, maintenance of water control structures, or easement enforcement, are necessary to ensure long-term sustainability of the mitigation project, the permittee must provide for such management and maintenance, including providing any necessary long-term financing mechanisms.

2611 DISTRICT WETLAND AND STREAM MITIGATION TRUST FUND PAYMENT

2611.1 The Department may accept payment into the District Wetland and Stream Mitigation Trust Fund instead of permittee-responsible mitigation when such payment authorized in accordance with §§ 2607.18 and 2607.19.

2611.2 Payment into the District Wetland and Stream Mitigation Trust Fund shall not be a substitute for the requirement to avoid or minimize wetland or stream impacts.

2611.3 An applicant proposing to make a payment into the District Wetland and Stream Mitigation Trust Fund shall so state in the permit application.

2611.4 In order to obtain approval of a proposed payment into the District Wetland and Stream Mitigation Trust Fund for a project, an applicant shall demonstrate the technical infeasibility of permittee-responsible mitigation specified in §§ 2607.18 and 2607.19 by providing the following information:

(a) An evaluation of a minimum of four (4) potential mitigation sites;

(b) A map and description of each site rejected;

(c) A justification as to why each site was unsuitable for mitigation; and

(d) Other information as required by the Department.

2611.5 The Department may reject a proposal for payment into the District Wetland and Stream Mitigation Trust Fund if the Department determines that mitigation requirements can be fulfilled on-site or permittee-responsible mitigation is technically feasible or practicable.

2611.6 The Department may approve or disapprove a proposal for payment into the District Wetland and Stream Mitigation Trust Fund as part of a final permit.

2611.7 The payment schedule for the District Wetland and Stream Mitigation Trust Fund is included below. The applicant must calculate the cost for each mitigation component listed. The sum of the costs equals the total amount of payment due.

Mitigation Component	Cost
Land Acquisition	Land market value[1]
Wetland or Stream Design	$25,000 per acre
Wetland or Stream Construction and Planting	$200,000 per acre
Wetland or Stream Maintenance and Monitoring for Five Years	$15,000 per year
Administrative Cost for Five Years	$8,000 per year

[1]Land market value for the project site or a similar site that would be suitable for a mitigation project.

2611.8 The Department shall adjust the fees in this section for inflation annually, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics. To perform this adjustment, the Department shall increase each fee by the percentage, if any, by which the Urban Consumer Price Index for June of the calendar year exceeds the Urban Consumer Price Index for June of the previous year. Each inflation adjustment shall be posted to the Department's website.

2611.9 The applicant shall use the mitigation ratios in §§ 2607.14 and 2607.15 to calculate the total mitigation fees based on the ratio of impacted stream or wetland area.

2612 PUBLIC NOTICE AND REVIEW OF WETLAND AND STREAM PERMIT APPLICATIONS

2612.1 Before issuing a wetland and stream permit or certification, the Department shall provide notice of the intent to issue the permit and the opportunity for a public hearing and may provide notice of an opportunity for the public to review the proposed project and submit written comments about the application.

2612.2 The public notice shall be given by:

(a) Joint notice with other federal or District agencies in the Federal Register or D.C. Register;

(b) Publication for at least one (1) business day in a daily newspaper of general

circulation in the District; or

(c) Publication in the D.C. Register.

2612.3 The Department may also provide for a comment period, of a duration determined by the Department, if and to the extent that the Department determines that a comment period would be in the public interest. After that comment period has ended and the Department has held a public hearing, if requested, the Department shall:

(a) Consider and review the written comments, testimony, and other information received; and

(b) Grant, deny, or condition a permit.

2612.4 The Department may delay a decision to grant, deny, or condition a permit for the following circumstances:

(a) Review required by federal agencies;

(b) Review required by other District agencies; or

(c) A request by an applicant.

2612.5 The Department may request additional information from the applicant or give the applicant an opportunity to provide additional information to address concerns raised during the public comment period or public hearing.

2612.6 The applicant may request, in writing, that the Department withhold its decision until additional information can be provided.

2612.7 If the applicant fails to provide additional information requested by the Department within six (6) months, the Department may consider the application as withdrawn.

2613 PERMIT AND CERTIFICATION DECISION AND APPEAL

2613.1 The Department will notify an applicant in writing of the Department's permit decision.

2613.2 The Department may issue a permit or certification only after an applicant has provided the Department a final site plan showing intended impacts and the information required by this chapter in accordance with §§ 2602, 2604, 2605, 2606, 2607, 2608, and 2609.

2613.3 An applicant shall not begin work authorized under a permit or certification until the Department has issued a permit.

2613.4 A permittee shall conduct all regulated activities in accordance with the permit or certification, including the approved final site plan and mitigation plan.

2613.5 A permit or certification issued by the Department is valid for five (5) years, unless the permit is modified, reissued, or revoked.

2613.6 The Department may issue a permit or certification after-the-fact for regulated activities conducted without a permit or certification if the work meets the requirements of this chapter and the applicant submits a mitigation plan meeting the mitigation ratios in §§ 2607.14 and 2607.15.

2613.7 The permit or certification shall specify the time period for which it is valid.

2614 WETLAND AND STREAM PERMIT MODIFICATION

2614.1 The Department may require a permittee to make modifications to an approved site plan or mitigation plan during construction to ensure compliance with this chapter.

2614.2 The Department may require a change to a site plan, mitigation plan, or component of a site plan or mitigation plan if the Department determines that a discrepancy between site conditions and the approved plan makes the plan inadequate to comply with the requirements of this chapter.

2614.3 A permittee may request that the Department make modifications to a permit or an approved site plan, mitigation plan, or component of a site plan or mitigation plan during construction to ensure compliance with this chapter.

2614.4 A permittee may not change an approved plan or its implementation without Department approval as follows:

(a) If a change is substantial, the permittee shall resubmit the revised plan to the Department for approval in accordance with this chapter; and

(b) If a change is not substantial, the permittee may secure written approval from the Department by mail, email, or modification of approved plans signed by a Department employee without submission of a revised application.

2614.5 For the purposes of this chapter, a substantial change in an approved plan is a change in design, specification, construction, operation, or maintenance that the Department determines:

(a) May result in a failure to comply with a requirement of this chapter; or

(b) Has an impact on District waters.

2614.6 A permittee shall make a request for modifications in writing, and the request shall contain the following information:

(a) The name of the permittee;

(b) The location of the wetland or stream impacts or mitigation project;

(c) A description of the proposed modification; and

(d) A justification for the modification

2614.7 For a substantial modification, a permittee shall submit a revised plan through the submittal database, and pay appropriate fees in set forth in § 2604.

2614.8 The Department will notify a permittee in writing whether the Department approves the permit or plan modification decision.

2615 SUSPENSION AND REVOCATION OF PERMIT

2615.1 The Department may suspend or revoke a permit or certification if the Department determines that any of the following has occurred:

(a) The permittee has failed to post a required bond or alternate form of security;

(b) The permittee has failed to comply with the requirements of a compliance or administrative order;

(c) The permittee has falsified or misrepresented any information in the permit application process;

(d) The permittee has failed to disclose a relevant or material fact;

(e) The permittee has violated a requirement of the permit;

(f) The permittee has substantially deviated from the plans, specifications, or requirements of the permit;

(g) The permittee has prevented a representative of the Department from entering the regulated activity or mitigation site to make reasonable inspections;

(h) New information or changes in site conditions necessitate revocation or suspension; or

(i) Other good cause to suspend or revoke the permit exists.

2615.2 Except as provided for emergency actions, the Department may suspend or revoke a wetland and stream permit or certification only if the Department first gives the permittee written notice of the facts that warrant suspension or revocation and provides the permittee an opportunity to request a hearing in accordance with § 2505.

2615.3 The Department may order the immediate suspension or revocation of a permit or certification if the Department finds that the public health, safety, or welfare requires the emergency action and promptly gives the permittee written notice of the emergency action.

2615.4 A notice of emergency action shall include a statement of the specific facts upon which the emergency action is based and provide information regarding the permittee's opportunity to request a hearing in accordance with § 2505.

2615.5 If the Department revokes a permit, the permittee shall restore the wetland or stream to its condition before the regulated activity began.

2616 WETLANDS OF SPECIAL CONCERN

2616.1 Wetlands designated as wetlands of special concern have exceptional ecological value and safeguard the natural diversity of the District's wetlands.

2616.2 The Department may designate any of the following as wetlands of special concern:

(a) Wetlands providing habitat or ecologically important buffers for the habitat of plant or animal species listed as federally threatened, endangered, or rare by the U.S. Fish and Wildlife Service;

(b) Wetlands providing habitat or ecologically important buffers for the habitat of plant or animal species listed as District species of greatest conservation need;

(c) Wetlands containing any of the following: vernal pools, headwater wetlands, groundwater seeps, or springs;

(d) Tidal wetlands; and

(e) Wetlands identified as Conservation Opportunity Areas in the District's Wildlife Action Plan.

2616.3 Maps of areas designated as wetlands of special concern will be available for public review on the Department's website. Wetlands of special concern include the following:

(a) Potomac River Floodplain wetlands;

(b) Oxon Run wetlands;

(c) Northern Rock Creek wetlands KA, KB, KG, JZ, JY, JX, KF, KI, and KH (as listed in the District's 2016 Wetland Conservation Plan);

(d) Anacostia River Gateway wetlands;

(e) Anacostia River tidal wetlands;

(f) Kenilworth wetlands;

(g) Kingman Island wetlands;

(h) Heritage Island wetlands;

(i) Poplar Point wetlands;

(j) Piney Branch wetlands LP and LQ (as listed in the District's 2016 Wetland Conservation Plan); and

(k) Theodore Roosevelt Island wetlands.

2616.4 The Department may annually update the map and list of areas designated as wetlands of special concern in § 2616.3.

2616.5 Mitigation for impacts to wetlands of special concern shall replace lost aquatic resource function.

2699 DEFINITIONS

2699.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Adaptive Management –a management strategy that anticipates likely challenges associated with mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a mitigation project and the identification and implementation of measures to rectify those problems.

Applicant - the legal property owner, an officer or an authorized agent of a corporation that is the legal owner or agent of the legal owner of the property, a legally authorized official of the federal or District of Columbia government, or an authorized partner of an association or partnership.

Aquatic resource – riparian ecosystems, surface waters, and groundwater systems.

Aquatic vegetation - vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Basic project purpose – the primary need that will be fulfilled by the proposed regulated activity that is used to determine whether a project is water-dependent. For example, the purpose of a residential development is to provide housing for people.

Certification or water quality certification – certification by the District pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) that a federal Clean Water Act Section 404 (33 U.S.C. § 1344) permit or letter of approval issued by the U.S. Army Corps of Engineers complies with the District's laws and regulations.

Clean Water Act - the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act (CWA) of 1977 and later amendments (33 U.S.C. §§ 1251 *et seq*.).

Corps of Engineers Wetland Delineation Manual – a publication of the U.S. Army Corps of Engineers Waterways Experiment Station titled "Corps of Engineers Wetlands Delineation Manual," (Wetlands Research Program Technical Report Y-87-1, January 1987) and the most recently approved U.S. Army Corps of Engineers guidance (https://www.nab.usace.army.mil/Missions/Regulatory/Jurisdictional-Determinations/).

Created wetland - a wetland created on a site that previously was not a wetland to replace wetlands that were unavoidably impacted during design and construction of a project.

Creation – the manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland that did not previously exist on an upland or deepwater site, resulting in an increase in wetland area.

Cowardin Classification – unless otherwise specified in this chapter, means the waters classification system in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service, December 1979, Reprinted 1982), located here:

https://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf.

Department – the Department of Energy and Environment, or its successor agency.

District - the District of Columbia.

District of Columbia Wetland Conservation Plan – the plan published by the Department to manage, protect, preserve, enhance, and extend the remaining wetlands in the District with a two-fold goal of (1) no net loss of wetland acreage and function, and (2) eventual overall net gain of wetland acreage and function. The District Wetland Conservation Plan is located here: https://doee.dc.gov/service/wetland-mapping-and-registry

District waters:

(a) Means flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District;

(b) Excludes:

(1) Water on private property prevented from reaching underground or land water courses; and

(2) Water in closed collection or distribution systems.

Drainage - methods for changing the hydrologic conditions of wetlands, including lowering groundwater or surface water levels through pumping, ditching, diverting, or otherwise altering water flow patterns.

Endangered species - fish, wildlife, or plants designated under the federal Endangered Species Act, in 50 C.F.R. §§ 17.11 and 17.12.

Enhancement - the manipulation of the physical, chemical, or biological characteristics of a wetland or stream to heighten, intensify, or improve specific function(s), that does not result in a gain in wetland or stream acres.

Ephemeral stream - flowing water in stream beds present during, and for a short duration after, precipitation events in a typical year, but not including streams for which groundwater is a source of the water.

Emergent wetland – a wetland dominated by erect, rooted, herbaceous vegetation.

Fill - any material placed in an area that changes the elevation of the preexisting surface water or groundwater level, or the soil surface.

Forested wetland – a class of wetland dominated by woody vegetation that is twenty (20) feet tall or taller and three (3) inches or larger in diameter at breast height. These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

Function - the role an aquatic resource serves through the physical, chemical, and biological processes that occur in the ecosystem, including:

(a) Passive recreation, uniqueness, and natural heritage value;

(b) Habitat for wildlife or fisheries;

(c) Sediment trapping or stabilization (short term);

(d) Flood desynchronization;

(e) Food chain support (nutrient export);

(f) Dissipation of erosive forces;

(g) Active recreation;

(h) Groundwater discharge or groundwater recharge;

(i) Nutrient retention or removal (long term);

(j) Sediment trapping or stabilization (long term);

(k) Reduction of pollutant loadings, including excess nutrients, sediment, and toxics;

(l) Attenuation of floodwaters and storm waters;

(m) Shoreline stabilization and erosion control; or

(n) Breeding grounds and habitat for species of plants and wildlife including fish, game, and non-game birds and mammals, including threatened, endangered and rare species and species in need of conservation.

General area - the geographic vicinity that has desired characteristics for fulfilling the basic project purpose.

Headwaters - the source or beginning of a stream or river.

Impact – adverse effect or to adversely affect.

Indirect impact – effects caused by the activity that occur after completion of the project or outside the project area, but were still reasonably foreseeable.

Initial planning phase - the period of time during which the feasibility of a project is evaluated before committing resources necessary for its implementation.

Intermittent stream - a stream that does not have flowing surface water during dry periods of the year, but has flowing water during certain times of the year resulting from the flow of groundwater, although runoff from rainfall can serve as a supplemental source of water for stream flow.

Jurisdictional determination - the determination made by the U.S. Army Corps of Engineers regarding its jurisdiction after determining whether:

(a) The waters are waters of the United States; or

(b) If not waters of the United States, whether the proposed type of activity may nevertheless so affect the waters of the United States that the assertion of federal regulatory jurisdiction is deemed necessary.

Maintenance:

(a) Means activities undertaken to prevent the deterioration, impairment, or need for repair of a serviceable fill area, structure, right-of-way, or land use, including management of vegetation and replacement of structural components.

(b) Does not include dredging, excavating, or filling, unless such action is conducted in a temporary sediment control structure, wash pond, or roadside ditch.

Minimize - to reduce impacts to wetlands, streams, and District waters to the greatest practicable and reasonable degree.

Mitigation – the restoration, creation, enhancement, or preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization measures have been taken.

Native - indigenous to the District.

Non-tidal wetland – a wetland that is not subject to the ebb and flow of tidal waters.

On-site – on the same project site on which a District waters have been impacted by a regulated activity.

Perennial stream – a stream that has flowing water year-round during a typical year, for which groundwater is the primary source of stream flow, and runoff from rainfall may be a supplemental source of stream flow. The water table is located above the stream bed for most of the year.

Permittee - an applicant to whom a permit has been granted by the Department in accordance with this chapter.

Permittee-responsible mitigation - a mitigation activity undertaken by the permittee (or an authorized agent or contractor) to provide mitigation for which the permittee retains full responsibility for meeting the established mitigation performance standards, long-term maintenance, and long-term protection of the mitigation site.

Permanent impacts –impacts to a wetland or stream that cause a permanent alteration of the physical, chemical, or biological properties of the stream, wetland, or other aquatic resource acreage or functions.

Performance standards – observable or measurable physical (including hydrological), chemical, or biological attributes that are used to determine whether a mitigation project meets its objectives.

Plan view drawing – a scaled graph or plot that represents the view of an object as projected onto orthogonal planes.

Pond - a still body of water, whether formed naturally or created artificially, that:

(a) Lacks wave action on the shoreline;

(b) Allows light to penetrate to the bottom; and

(c) Is shallow enough for rooted water plants to grow.

Practicable - available and capable of being done after taking into consideration costs, existing technology, and logistics in light of the basic project purpose.

Preservation:

(a) Means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources; and

(b) Includes activities commonly associated with the protection

and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms.

Project - the entire activity on one or more parcels of land, of which a regulated activity is a part, including all proposed and projected phases and sections of land subdivisions.

Profile drawing – a scaled graph of plot that represents the side view of an object.

Propagule - a structure (such as a cutting, a seed, or a spore) that propagates a plant.

Regulated activity - any activity that is undertaken or originates in a wetland or stream, including the following:

(a) Removing, excavating, dredging, or filling with soil including sediments, sand, gravel, minerals, organic matter, or materials of any kind;

(b) Changing, blocking or diverting existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

(c) Disturbing the surface water level or groundwater elevation by drainage, impoundment, diversion, filling, or other means;

(d) Dumping or discharging or filling with materials;

(e) Grading or removing materials that would alter existing topography;

(f) Destroying or removing plant or aquatic life that would alter the character of a wetland;

(g) Introducing plant or aquatic life that would alter the character of a wetland;

(h) Diverting, obstructing, or piping water flow from its natural path;

(i) Conducting sediment or water sampling activities or studies;

(j) Driving piles, paving, and placing obstructions; and

(k) Undertaking other activities that change the physical, biological, and chemical integrity of a wetland.

Restoration - the manipulation of the physical, chemical, or biological characteristics of a degraded or former aquatic resource site with the goal of returning natural or historic functions.

Riparian Buffer - an upland area, surrounding a wetland or stream, measured one hundred (100) feet from the outer edge of the wetland boundary or stream bank that protects or enhances functions associated with wetlands, rivers, streams, lakes, and marine and estuarine systems from disturbances associated with adjacent land uses.

Scrub-shrub wetland – a class of wetlands dominated by woody vegetation three (3) feet to twenty (20) feet tall, including tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions, but excluding woody vines.

Species of greatest conservation need - an animal species that is listed in the District's Wildlife Action Plan as a species in need of conservation through targeted management actions, based on a set of criteria that are detailed in the Wildlife Action Plan. This includes animal species whose populations are imperiled, vulnerable, or declining, or have their habitat at risk.

Stormwater management - a system to control stormwater runoff with structural and nonstructural best management practices, including:

(a) Quantitative control of volume and rate of surface runoff; and

(b) Qualitative control to reduce or eliminate pollutants in runoff.

Stream – a channel or conveyance of surface water with perennial, intermittent, or ephemeral flow and having defined bed and banks, whether natural or artificial.

Stream bank – the side slopes of an active channel between which the streamflow is normally confined.

Sub-watershed - a smaller unit of a watershed that contains a set of streams that all drain into a single larger-order stream.

Temporal loss - the time between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the mitigation site.

Temporary impacts – impacts to wetlands, streams, or other aquatic resources that do not cause a permanent alteration of the physical, chemical, or biological properties of the stream, wetland, or other aquatic resources, or the

permanent alteration or degradation of existing wetland, stream, or aquatic resource acreage or functions.

Thalweg - The deepest part of any cross section of a river or stream.

Top-of-bank – the break in slope between a streambank and the surrounding terrain.

Tidal wetland – a wetland that is inundated by tidal waters.

Vernal pool – a seasonal depressional wetland covered by water for variable periods of time, but that may be completely dry for most of the summer and fall.

Water-dependent - requiring access to, proximity to, or location within a wetland or stream to fulfill the basic project purpose.

Watershed:

(a) Means the land area that drains water to a particular stream, river, or lake; and

(b) May be identified by tracing a line along the highest elevations between two areas on a map, often a ridge.

Waters of the United States – waters that are defined as waters of the United States in 33 CFR § 328.3 or 40 CFR § 120.2.

Wetland

(a) Means an area that is inundated by tides or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and

(b) Includes a marsh, swamp, pond, or vernal pool.

Wetland and Stream Mitigation Trust Fund program - a program involving the restoration, establishment, enhancement, or preservation of aquatic resources through funds paid to a governmental entity to satisfy mitigation requirements for the Department's permits.

Wildlife - any species of a vertebrate or invertebrate animal, excluding domestic species.