

6 ONE FEDERAL DECISION

6.1 Background

*Executive Order 13807: Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*¹ requires Federal agencies to process environmental reviews and authorization decisions for major infrastructure projects as “One Federal Decision (OFD).” The Executive Order 13807 (EO) sets a goal of reducing the average time to complete environmental reviews under the National Environmental Policy Act (NEPA) and authorization decisions for major infrastructure projects within an agency average two years from the publication of the Notice of Intent (NOI). The EO also directs that, except under certain circumstances,² the Federal lead agency and all Cooperating and Participating agencies shall “record any individual agency decision in one Record of Decision (ROD)” and prepare a single Environmental Impact Statement (EIS). Provided the EIS includes adequate detail to inform the agency decisions, the EO requires obtaining permits and approvals within 90 days of the issuance of the ROD³. The EO also requires major infrastructure projects to be managed under a single permitting timetable covering environmental review and authorizations.

6.2 Agency Roles

In accordance with 40 CFR 1501.6 and 23 U.S.C. § 139(d)(5), agencies with jurisdiction by law should be invited to serve as Cooperating Agencies for an EIS. Other agencies with special interest or expertise with respect to any environmental impact involved in the proposed project or project alternative may also be invited.

The Federal Highway Administration (FHWA) is the lead Federal agency for the Study. The Cooperating Agencies for this Study include those Federal and state agencies that would ultimately be responsible for Federal authorization decisions. In addition, other key Federal, state, regional, and local agencies with regulatory or management jurisdiction over sensitive resources were invited to act as Cooperating Agencies. There are eight Cooperating Agencies (four Federal, three state, and one regional), 18 Participating Agencies (ten Federal, six state, and two county), and seven Notified Agencies (three Federal, one state, and three regional) for the Study. An overview of the Federal, state, and regional Cooperating Agencies is provided below. Refer to **Chapter 7, Table 7-1** and the *Public Involvement and Agency Coordination Technical Report (Appendix P)*, for a complete listing of the Lead, Cooperating, Participating, and Notified Agencies for the Study.

The following are the Federal Cooperating Agencies with authorization decision responsibilities, and thus are subject to the OFD requirement for this Study:

¹ Exec. Order No. 13807, 82 Fed. Reg. 40463 (August 15, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>

² The EO provides that a single ROD shall be issued, “unless the project sponsor requests that agencies issue separate NEPA documents, the NEPA obligations of a cooperating or participating agency have already been satisfied, or the lead Federal agency determines that a single ROD would not best promote completion of the project’s environmental review and authorization process.”

³ The lead Federal Agency may extend the 90-day deadline if it determines Federal law prohibits the agency from issuing its approval within 90 days or an extension would better promote completion of the project’s environmental review and authorization process or the project sponsors requests a different timeline. Exec. Order No. 13807, 82 Fed. Reg. 40463 (August 15, 2017). <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

- US Army Corps of Engineers (USACE) Baltimore District
- US Environmental Protection Agency (EPA)
- National Park Service (NPS)
- National Capital Planning Commission (NCPC)⁴

The state Cooperating Agencies for the Study are:

- Maryland Department of Environment (MDE)
- Maryland Department of Natural Resources (MDNR)
- Virginia Department of Transportation (VDOT)

The one regional Cooperating Agency is Maryland-National Capital Park and Planning Commission (M-NCPPC) covering both Montgomery and Prince George's Counties.

6.3 Concurrence Points

The 2018 *Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807*⁵ issued by the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) provides a framework for implementation of EO 13807. The Memorandum of Understanding (MOU) identifies three concurrence points in the environmental review process where the lead Federal agency must request the concurrence of Cooperating Agencies with authorization decision responsibilities:

- Purpose and Need (generally prior to the issuance of the notice of intent for an infrastructure project);
- Alternatives to be carried forward for evaluation (prior to detailed analysis in the Draft EIS); and
- Identified preferred alternative (prior to identification in the Draft EIS or the Final EIS).

A Coordination Plan⁶ was developed during the scoping phase of the Study, which served as a schedule of concurrence points for the Purpose and Need, Alternatives Retained for Detailed Study (ARDS), and the Preferred Alternative. Coordination with the Cooperating Agencies on the concurrence points for the Study occurred at Interagency Working Group (IAWG) Meetings and other resource specific coordination meetings.

Written concurrence was received⁷ on the Purpose and Need on May 16, 2018, on the ARDS on June 5, 2019, and on the Revised ARDS on October 16, 2019. Concurrence on the Preferred Alternative will occur during the development of the Final EIS.

⁴ NCPC is not subject to the One Federal Decision Memorandum of Understanding (MOU) but has agreed to the "spirit" of the Executive Order 13807 through coordination with FHWA.

⁵ Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807, <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>

⁶ Pursuant to 23 U.S.C. 139(g)

⁷ NCPC concurred on the Purpose and Need only; M-NCPPC did not concur on Purpose and Need or ARDS, including revised ARDS

6.4 Federal Cooperating Agencies Authorization

6.4.1 Ongoing Coordination with National Park Service (NPS)

The NPS authorization decision relates to consideration of a Special Use Permit for the temporary use of land under its administration for construction staging and execution of a highway deed easement by FHWA, pursuant to the authority of 23 U.S.C. 107(d) for the proposed permanent use of a portion of that land for the project.

Assuming selection of a Build Alternative, the NPS action would be taken in response to FHWA's request for land for highway purposes from the following NPS park properties: George Washington Memorial Parkway, Chesapeake and Ohio Canal National Historical Park, Clara Barton Parkway, Baltimore-Washington Parkway, Greenbelt Park, and Suitland Parkway and their accompanying administered properties, as expressed in statute, regulation, and policies.

After conclusion of the NEPA process and NPS agrees to the use of the impacted lanes, FHWA would officially request land for highway purposes via execution of a highway deed easement. NPS authorization or consent of the request would be required to advance the transfer of land for permanent incorporation into transportation use. The execution of a highway deed easement would be done in compliance with 23 U.S.C. 107(d) which authorizes the FHWA to arrange with Federal agencies to provide rights-of-way to state DOT's whenever such rights-of-way are required for the Interstate System and NPS Director's Order (DO) #87D: Non-NPS Roads, which sets forth NPS operational policies and procedures for responding to requests for use of national parks for non-NPS highway projects partially or fully funded under Title 23 of the United States Code. The project would also require NPS to issue a Special Use Permit for the temporary use of land under its administration for construction staging.

A. Specific Impacts to NPS Properties

In coordination with NPS and to assist NPS' decision making, impacts occurring on NPS properties have been called out specifically, and the impacts to NPS resources are quantified. All quantified impacts presented below and in Chapter 4 of the DEIS (and in referenced technical reports) are assumed to be permanent or long-term effects. As design is advanced on a Preferred Alternative, the long-term effects will be refined and short-term, construction-related effects will be quantified and documented in the FEIS and Final Section 4(f) Evaluation. The following text summarizes the potential, specific impacts to resources on NPS properties. Further details on these impacts are available in Chapter 4 and the referenced technical reports.

The potential impacts from the Build Alternatives to the six NPS park and historic properties are identical as shown in **Table 6-1**. Additional details on these potential impacts are included in **Chapter 5** of this DEIS and the *Draft Section 4(f) Evaluation (Appendix F)*.

Table 6-1: Potential Impacts to NPS Properties

NPS Property	Total Size (Acres)	Potential Impacts from the Alternatives 8, 9, 9M, 10, 13B, 13C (Acres)
George Washington Memorial Parkway	7,146	12.2
Chesapeake and Ohio Canal National Historical Park	19,575	15.4
Clara Barton Parkway	96.2	1.8
Baltimore-Washington Parkway ¹	~1,400	69.3
Greenbelt Park	1,176	0.6
Suitland Parkway	419	0.3

Note: ¹The size of the Baltimore-Washington Parkway in Table 5-2 is only the area within the historic boundary, which ends at the Anne Arundel County border. The full size of the Baltimore Washington Parkway is larger.

NPS wetlands subject to NPS DO #77-1: Wetland Protection include: three palustrine emergent (PEM), nine palustrine forested (PFO), one palustrine scrub-shrub (PSS), four riverine lower perennial, two riverine upper perennial, and 22 riverine intermittent wetlands. The impacts to wetland features on NPS properties is summarized in **Table 6-2**. (Refer to **Table 4-21** and *Appendix I of the Natural Resources Technical Report (Appendix K)* for details on specific wetland impacts on NPS properties.) NPS requires avoidance, minimization, and compensation for unavoidable adverse impacts to wetlands via restoration of degraded wetlands on NPS property at a minimum of a 1:1 restoration/replacement ratio that can be adjusted upward to ensure functional replacement. NPS requires that a Wetland Statement of Findings (WSOF) be prepared in accordance with the procedural manual during NEPA documenting compliance with DO #77-1 for proposed actions that would result in adverse impacts to wetlands. The draft WSOF will be developed once a Preferred Alternative has been identified and temporary and permanent impacts have been determined. The FEIS and the draft WSOF will be advertised for public comment and will have a concurrent 30-day comment period. The final, signed WSOF will be attached to the ROD.

Work within floodplains on NPS lands must adhere to NPS DO #77-2: Floodplain Management, unless exempted, which calls for the avoidance of long- and short-term environmental effects associated with the occupancy and modification of floodplains. The Floodplain Statement of Findings will be prepared and may be combined with the WSOF in the FEIS.

Table 6-2: Summary of NPS Wetland Impacts on NPS Properties within the Corridor Study Boundary

NPS Property	Potential Impacts to NPS Wetlands from the Alternatives 8, 9, 9M, 10, 13B, 13C (Acres)
George Washington Memorial Parkway	0.09
Chesapeake and Ohio Canal National Historical Park	1.37
Clara Barton Parkway	0.02
Baltimore-Washington Parkway	0.39
Greenbelt Park	0.13
Suitland Parkway	0.29
TOTAL NPS WETLAND IMPACTS ON NPS PROPERTIES	2.29

Note: The impacts indicated in this table are only those occurring on NPS property as defined in the NPS DO #77-1: Wetland Protection and Procedural Manual #77-1: Wetland Protection.

In a letter dated March 12, 2020, the Maryland Historical Trust (MHT) concurred with the eligibility and effects determination for the Study as well as the need for further Phase I and II archaeological investigation in the specified areas to which access was denied. **Table 6-3** summarizes the NPS historic properties that would incur an adverse effect from the Build Alternatives (refer to **Tables 4-11 and 4-12** and **Appendix G** for specific details on the adverse effects to historic properties). Due to the complexity of the Study and current state of design, MDOT SHA and FHWA will conclude the Section 106 process through execution of a Programmatic Agreement (PA). MDOT SHA and FHWA will work with NPS to resolve the adverse effect through development of appropriate mitigation measures that will be captured in the PA.

Table 6-3: NPS Historic Properties with Adverse Effect

MIHP#/DHR#	Name	Period of Significance	NRHP Criteria ²
PG:69-26	Baltimore-Washington Parkway	1942-1954	A, C
M: 12-46	Chesapeake and Ohio Canal National Historical Park	1828-1924	A, C, D
M: 35-61 and 029-0228 (Virginia)	George Washington Memorial Parkway/Clara Barton Memorial Parkway	1930-1966	B, C
PG:67-69	Greenbelt Park	Unspecified	A, C, D
18MO749	C&O Canal Site 1	Early Woodland	D
18MO751	C&O Canal Site 3	1828-1924	D
(N/A)	Dead Run Ridges Archaeological District ¹	Late Archaic-Woodland	D

Note: ¹ On February 14, 2020, Virginia DHR did not concur with characterizing the resources as an archaeological district and recommended four sites as individually eligible for listing on the NRHP.

²The NRHP Criteria are:

- A. 2 - The characteristics of an historic property qualifying it for inclusion in or eligibility for the NRHP (36 CFR Part 800.16[i]), include A: Associated with events that have made a significant contribution to the broad patterns of our history; or
- B. Associated with the lives of persons significant in our past; or
- C. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. Have yielded or may be likely to yield, information important in prehistory or history.

NPS has identified state and globally rare plants and invertebrates from NPS property within the Potomac Gorge on both sides of the Potomac River through numerous distributional surveys over the past ten to twenty years. Some of these areas lie adjacent to the corridor study boundary. **Table 6-4** includes the list of these state-listed rare plant and invertebrate species from the NPS Potomac Gorge park surveys.

Table 6-4: Virginia and Maryland State Listed Species From the Potomac Gorge Known or Potentially Occurring³ (VDCR/NPS/MDNR) Within the Corridor Study Boundary

Scientific Name	Common Name	Organism	Global Rank ²	State Rank/Status ³
<i>Stygobromus phreaticu</i>	Northern Virginia Well Amphipod	Amphipod	G1	S1
<i>Stygobromus pizzinii</i> ¹	Pizzini's Amphipod	Amphipod	G3G4	S1S2
<i>Fontigens bottimer</i>	Appalachian Springsnail	Snail	G2	S1S2
<i>Hydropsyche brunneipenni</i>	Caddisfly	Caddisfly	G3G4	S1S3
<i>Cordulegaster erronea</i>	Tiger Spiketail	Dragonfly	G4	S3
<i>Gomphus fraternus</i>	Midland Clubtail	Dragonfly	G5	S2
<i>Acronicta radcliffei</i>	Radcliffe's Dagger Moth	Moth	G5	S2S4
<i>Acronicta spinigera</i>	Nondescript Dagger Moth	Moth	G4	S1S3
<i>Sphinx frankii</i>	Frank's Sphinx	Moth	G4G5	S2S3
<i>Arabis patens</i>	Spreading Rock Cress	Vascular Plant	G3	S1
<i>Baptisia australis</i>	Blue Wild Indigo	Vascular Plant	G5T5	S2
<i>Boechea dentata</i>	Short's Rock Cress	Vascular Plant	G5	S1
<i>Cirsium altissimum</i> ¹	Tall Thistle	Vascular Plant	G5	S1
<i>Clematis viorna</i>	Vase-vine Leatherflower	Vascular Plant	G3	S3
<i>Coreopsis tripteris</i>	Tall Tickseed	Vascular Plant	G5T5	S1
<i>Cuscuta polygonorum</i> ¹	Smartweed Dodder	Vascular Plant	G5	S1
<i>Echinocystis lobata</i> ¹	Wild Cucumber	Vascular Plant	G5	SH
<i>Erigenia bulbosa</i>	Harbinger-of-Spring	Vascular Plant	G5	S1
<i>Eryngium yuccifolium</i> var. <i>yuccifolium</i> ¹	Northern Rattlesnake-Master	Vascular Plant	G5T5	S2
<i>Galactia volubilis</i>	Downy Milkpea	Vascular Plant	G5	S3
<i>Helianthus occidentalis</i>	McDowell's Sunflower	Vascular Plant	G5	S1/T
<i>Hibiscus laevis</i>	Halberd-leaf Rosemallow	Vascular Plant	G5	S3
<i>Hybanthus concolor</i>	Green Violet	Vascular Plant	G5	S3
<i>Lipocarpha micrantha</i>	Small-flower Halfchaff Sedge	Vascular Plant	G5	S2
<i>Maianthemum stellatum</i>	Starry Solomon's-Plume	Vascular Plant	G5	S2
<i>Monarda clinopodia</i>	Basil Beebalm	Vascular Plant	G5	S3S4
<i>Orthilia secunda</i> ¹	One-sided Shinleaf	Vascular Plant	G5	SH
<i>Phacelia covillei</i>	Covilli's Phacelia	Vascular Plant	G3	S1
<i>Phaseolus polystachios</i>	Wild Kidney Bean	Vascular Plant	G5	S3
<i>Polygala polygama</i>	Racemed Milkwort	Vascular Plant	G5	S1/T
<i>Sida hermaphrodita</i>	Virginia Sida	Vascular Plant	G3	S1
<i>Silene nivea</i>	Snowy Campion	Vascular Plant	G4*	S1

Notes: ¹Historically occurred within the Potomac Gorge Conservation Site crossed by the corridor study boundary.

²G1 = Highly Globally Rare, G2 = Globally Rare, G3 = Very Rare and Local or Range Restricted, G4 = Apparently Secure Globally, G5 = Demonstrably Secure Globally, GNR = Not Yet Ranked, G* = Species has not yet been Ranked or additional analysis is needed

³Rank: S1 = Highly State Rare, S2 = State Rare, S3 = Watch List, S4 = Apparently Secure; Status: E = Endangered, T = Threatened
Sources: VDCR July 31, 2019 letter, Steury et al. 2007, NPS Coordination

Coordination with NPS will continue and targeted plant species surveys within the corridor study boundary are occurring or are planned between Spring and Fall 2020. The result of these surveys will be presented in the FEIS. Additional information on state listed rare plant and invertebrate species documented by NPS is included in the *Natural Resources Technical Report (Appendix L, Section 2.10)*.

Using the 2013/2014 GIS forest cover data from the Chesapeake Conservancy Conservation Innovation Center's High Resolution Land Cover Data for tree canopy cover⁸ and the Virginia Department of Forestry (VDOF) 2005 Virginia Forest Cover dataset (VDOF, 2014), the potential impacts to tree canopy cover on NPS properties were calculated and summarized in **Table 6-5**. As the Study progresses and once a Preferred Alternative is identified, a detailed tree survey on NPS properties will be conducted.

Table 6-5: Tree Canopy Cover Impacts on NPS Properties in Acres

NPS Property	Potential Impacts from the Alternatives 8, 9, 9M, 10, 13B, 13C (Acres)
George Washington Memorial Parkway	9.3
Chesapeake and Ohio Canal National Historical Park	16.6
Clara Barton Parkway	1.2
Baltimore-Washington Parkway	47.0
Greenbelt Park	0.8
Suitland Parkway	1.3
TREE CANOPY COVER TOTAL¹ IMPACTS ALL NPS PROPERTIES (ACRES)	76.2

Note: ¹ The total reflects tree canopy cover areas by individual property within the LODs.

B. Ongoing Coordination with NPS Regarding Avoidance and Minimization Measures to NPS Properties

MDOT SHA and FHWA recognize the importance of the NPS properties that would be impacted by the Build Alternatives. Since initiation of the study, NPS has actively participated as a Cooperating agency in the NEPA process and as a consulting party in the Section 106 consultation. MDOT SHA and FHWA have met with NPS staff on a regular basis and this coordination will continue through project development, design and construction stages of the project. One of the challenges with this consultation has been in locating and interpreting the various formal and informal agreements for the use of the NPS properties for transportation use, some of which are over 50 years old. The following discussions summarize the avoidance and minimization efforts made to-date by MDOT SHA and FHWA regarding NPS properties. The effort to avoid, minimize and mitigate unavoidable impacts will continue through ongoing and future coordination with NPS staff.

a. American Legion Bridge Area: George Washington Memorial Parkway, C&O Canal, and Clara Barton Parkway

As part of the *Draft Section 4(f) Evaluation*, MDOT SHA and FHWA developed and presented several options for avoiding the George Washington Memorial Parkway (GWMP), Chesapeake and Ohio (C&O) Canal, and Clara Barton Parkway while replacing the American Legion Bridge. These avoidance options included a suspension bridge and a tunnel and are fully described in the *Draft Section 4(f) Evaluation*, (**Appendix F, Section 5.1.2**).

In response to NPS comments seeking no direct access to GWMP from the managed lanes, MDOT SHA completed a traffic analysis to determine traffic implications of no direct access on I-495 and GWMP.

⁸ <https://chesapeakeconservancy.org/conservation-innovation-center-2/high-resolution-data/land-cover-data-project/>

Results showed that direct access was needed to meet the Study's purpose and need. NPS asked for additional information and MDOT SHA provided a supplemental analysis of options including providing slip ramps on the American Legion Bridge and GWMP for outbound direct access only. MDOT SHA also developed five additional interchange options at GWMP to avoid or minimize visual and physical impacts to GWMP. The option of nested ramps as opposed to flyover ramps was chosen to minimize visual impacts to the historic parkway and is included in the current design (**Appendix D, Map Sheet 1**).

Replacement of the American Legion Bridge will be required under any of the Build Alternatives. In order to minimize the potential construction impacts, MDOT SHA minimized areas of impact along C&O Canal by working with NPS to determine suitable locations for construction areas and temporary access roads on both the east and west sides of the bridge. Construction areas were adjusted to avoid a sensitive historic lock east of I-495. Additionally, MDOT SHA committed to using barges in the Potomac River for construction to further minimize impacts at GWMP and C&O Canal.

Other minimization options were also considered and discussed with NPS such as a double deck bridge, top-down construction and reduced typical sections and pier locations (**Appendix F, Section 2.1.2.C**).

In response to NPS comments, all stormwater management surface facilities were removed from NPS property except for scuppers on the American Legion Bridge, which are needed due to the profile change from the Clara Barton Parkway to the Potomac River. MDOT SHA explained that a much longer bridge would be needed to avoid the use of scuppers but committed to planning the locations of the scuppers to minimize impact to NPS property.

These minimization efforts have resulted in a reduction of impacts at GWMP from 17.6 acres in June 2019 to 12.2 acres in December 2019. Most of the current LOD is due to area needed on a temporary basis for construction of the American Legion Bridge.

b. Greenbelt Park, Baltimore-Washington Parkway, and Suitland Parkway

As part of the Draft Section 4(f) Evaluation, MDOT SHA and FHWA developed and presented several options for avoiding Greenbelt Park, Baltimore-Washington (BW) Parkway, and Suitland Parkway.

To address NPS comments about having no direct access to BW Parkway, a traffic analysis was completed to determine traffic implications of no direct access on I-495 and BW Parkway. Results showed that direct access was needed to meet the Study's Purpose and Need. Six options for direct access were developed and presented to NPS to further reduce physical and visual impacts to Greenbelt Park and BW Parkway. In addition to further reduce visual impacts to BW Parkway and Greenbelt Park, two proposed flyover ramps were removed from the current interchange design (**Appendix D, Map Sheet 80**).

Minimization of physical impacts at Greenbelt Park was achieved by placing a retaining wall along the relocated ramp at BW Parkway and removing stormwater management facilities from this NPS property. These minimization efforts have resulted in a reduction of impacts to Greenbelt Park from 2.0 acres in June 2019 to 0.6 acre in December 2019, and at BW Parkway (Parkland) from 69.9 acres in June 2019 to 69.3 acres in December 2019.

6.4.2 Ongoing Coordination with US Army Corps of Engineers (USACE) Regarding Avoidance and Minimization to Jurisdictional Features

The proposed transportation upgrades to the I-495 and I-270 corridors being evaluated in the Study will result in discharges of dredged/fill material into Waters of the US, including jurisdictional wetlands and structures built in/over navigable waters. Therefore, the project will require USACE authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Concurrent with the NEPA Process, MDOT SHA has prepared a Joint Federal/State Permit Application and supporting documentation for the Alteration of Any Floodplain, Waterway, Tidal or Non-Tidal Wetland within the LODs of the Build Alternatives of the Study. This application was prepared pursuant to the requirements of the Code of Maryland Regulations, Sections 26.17 and 26.23, and Section 404 of the Clean Water Act and supported by the DEIS. The *Joint Permit Application* (JPA) is included in **Appendix R**.

The JPA is further supported by the *Avoidance, Minimization and Mitigation Report* (AMR) (**Appendix M**) and the *Draft Compensatory Mitigation Plan* (**Appendix N**). The AMR describes the process of avoiding and minimizing impacts to wetlands, their buffers, waterways, and the Federal Emergency Management Agency (FEMA) 100-year floodplain to the greatest extent practicable and presents justifications for impacts that were unavoidable. The *Draft Compensatory Mitigation Plan* presents the approach to compensatory mitigation for the unavoidable impacts from the Build Alternatives and includes Phase I Mitigation Design Plans for permittee-responsible mitigation. Phase II Mitigation Design Plans will be developed for approved sites and included in the Final Compensatory Mitigation Plan (Final CMP).

Section 14 of the Rivers and Harbors Act of 1899, as amended and codified in 33 US Code (USC) 408 (Section 408) regulates alteration of USACE civil work's projects, such as dams, levees, or flood channels. The Section 408 review process typically includes review of engineering, environmental, legal, and safety issues associated with the requested alteration(s). USACE Engineering Circular No. 1165-2-220 issued on September 10, 2018 provides procedural guidance for processing Section 408 requests. MDOT SHA coordinated with USACE to determine applicability of Section 408 to the proposed Study. USACE identified one Section 408 resource within the corridor study boundary, the Washington Aqueduct, located adjacent to Clara Barton Parkway near the Potomac River. This feature would not be impacted by any of the Build Alternatives.

6.4.3 Ongoing Coordination with US Environmental Protection Agency (EPA)

Under Section 309 of the Clean Air Act, the EPA is charged with reviewing EISs of all Federal agencies and to comment on the adequacy of the analysis, and identification and recommendation of appropriate measures to avoid and mitigate significant environmental impacts of the proposed action.⁹ The EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of its availability in the Federal Register. The EPA also has veto power over the Section 404 permits issued by the USACE. It is anticipated that EPA will provide comments on the EIS in fulfillment of their statutory duty under the Clean Air Act and coordinate with the lead Federal Agency and state proponents consistent with that authority.

6.4.4 Ongoing Coordination with National Capital Planning Commission (NCPC)

The Capper-Cramton Act (CCA) of 1930 (46 Stat. 482), as amended, states that lands purchased with funds appropriated under the CCA for the park, parkway, and playground system in Maryland shall be developed

⁹ <https://www.epa.gov/nepa>

and administered by M-NCPPC in accordance with plans approved by the National Capital Park and Planning Commission (predecessor of NCPC). NCPC also has responsibility under NEPA and is participating as a Cooperating agency to fulfill their NEPA responsibility for CCA-related stream valley parks and in the spirit of EO 13807 as NCPC was not a signatory of the MOU. MDOT SHA and FHWA will continue to coordinate with NCPC on their authority over Capper-Cramton properties.

MDOT SHA and FHWA have been actively coordinating with staff from NCPC throughout the Study to date including two informational presentations to the full Commission on July 11, 2019 and November 7, 2019. Concerns raised by the NCPC Commission focused on the need for additional efforts to analyze alternatives that would limit or avoid Capper-Cramton funded park impacts. MDOT SHA studied the MD 200 Diversion Alternative, which would avoid impacts to sensitive environmental resources on the topside of I-495, including significant Capper-Cramton funded parkland. The results of the analysis demonstrated that the MD 200 Diversion Alternative performed the worst of all the Build Alternatives under consideration in the majority of traffic metrics, and therefore was not carried forward as an Alternative Retained for Detailed Study. Refer to **Chapter 2, Section 2.5.3** and **Appendix B** for additional details.

However, consideration of an alternative which minimizes Capper-Cramton parkland on the topside of I-495 is under review in this DEIS. MDOT SHA has incorporated Alternative 9 Modified (9M) as a Build Alternative in the DEIS which provides a one-lane, managed lane system along the top side of I-495 between I-270 West Spur and I-95. Alternative 9M includes a two-lane, managed lane system within the portion of the study area outside of the I-495 topside limits mentioned above. An analysis to the same level as the Screened Alternatives has been done for Alternative 9 Modified and is included in the DEIS for public review and comment. Refer to **Chapter 2, Section 2.6.4** and **Appendix B** for additional details.

MDOT SHA has worked extensively with NCPC and M-NCPPC on minimization measures to reduce environmental impacts, including significantly reduced impacts to sensitive resources including Capper-Cramton funded parkland. A summary of the minimization of impacts to park properties acquired with Capper-Cramton funding is included in **Table 6-6**. For example, Rock Creek and Rock Creek Stream Valley Park experienced the most significant reduction in impact including a 74 percent reduction in park impacts, 45 percent reduction in wetland impacts and an 88 percent reduction in stream impacts. This reduction in impacts was coordinated with both NCPC and M-NCPPC and presented to the full NCPC and M-NCPPC Commissions in November 2019.

Table 6-6: Summary of Minimization of Impacts to Parks Acquired with Capper-Cramton Funding Implemented Between June 2019 and May 2020

Park Property Acquired with Capper-Cramton Funding	June 2019 Impacts in acres	May 2020 Impacts in acres	Change in Impacts in acres
George Washington Memorial Parkway	17.6	12.5	- 5.1
Chesapeake and Ohio Canal National Historical Park	15.1	15.4	+ 0.3
Clara Barton Parkway	1.8	1.8	No Change
Cabin John Stream Valley Park, Unit 2	0.1	< 0.1	Negligible
Rock Creek Stream Valley Park, Unit 3	4.9 4.6 (Alt 9M)	3.3 2.5 (Alt 9M)	- 1.6 - 2.1 (Alt 9M)
Rock Creek Stream Valley Park, Unit 2	9.6 9.5 (Alt 9M)	0.4 0.2 (Alt 9M)	- 9.2 - 9.3 (Alt 9M)
Locust Hill Neighborhood Park (previously part of Rock Creek Park)	0.3 0.3 (Alt 9M)	0.3 0.2 (Alt 9M)	No Change - 0.1
Sligo Creek Parkway	5.0 4.1 (Alt 9M)	4.1 3.3 (Alt 9M)	- 0.9 - 0.8 (Alt 9M)
Northwest Branch Stream Valley Park, Unit 3	3.2	3.0	- 0.2
Cabin John Regional Park	5.4 (Alt 8, 9, 9M) 6.9 (Alt 10) 5.2 (Alt 13B) 6.7 (Alt 13C)	5.7 (Alts 8,9, 9M) 7.2 (Alt 10) 4.5 (Alt 13B) 5.2 (Alt 13C)	+ 0.3 (Alts 8, 9, 9M) + 0.3 (Alt 10) - 0.7 (Alt 13B) - 1.5 (Alt 13C)

MDOT SHA and FHWA will continue to coordinate with NCPC and M-NCPPC on additional minimization measures and appropriate mitigation measures for the remaining unavoidable impacts.

6.5 Permits, Approvals and Authorizations Required

In addition to NEPA compliance, several permits, approvals and authorizations are being coordinated concurrently preparation of this EIS. Federal agency authorizations would be obtained within 90 days of issuance of a Record of Decision consistent with Section 5 of EO 13807 or would be obtained prior to construction of any improvements. **Table 6-7** summarizes the Federal, state, and local permits, authorizations and approvals that will likely be required based on the current Study design assumptions and associated impacts.

Table 6-7: Likely Permits and Approvals

	Permit/ Approval	Responsible/Permitting Agency
Concurrent with NEPA or within 90 days from the Record of Decision	National Environmental Policy Act (NEPA) Approval – Record of Decision ¹	Federal Highway Administration
	Section 4(f) Approval	Federal Highway Administration
	Endangered Species Act Consultation	US Fish and Wildlife Service / NOAA-NMFS
	Section 106 Programmatic Agreement	Federal Highway Administration
	Clean Water Act Section 404 and Section 10	US Army Corps of Engineers
	Maryland/Virginia State Waters (Section 401)	US Army Corps of Engineers / Maryland Department of Environment / Virginia Department of Environmental Quality
	Maryland Nontidal Wetlands and Waterways Permit	Maryland Department of Environment
	Virginia Wetland Protection Permit	Virginia Department of Environmental Quality
Prior to Construction	Special Use Permit - Construction in VA and MD	National Park Service
	Capper-Cramton Park Permits	National Capital Planning Commission
	Park Construction Permit - M-NCPPC	Maryland National Capital Park and Planning Commission
	Maryland Reforestation Law Approval	Maryland Department of Natural Resources
	State and County Forest Conservation Easement Revision Approvals	Maryland Department of Natural Resources / Maryland National Capital Park and Planning Commission
	General Permit for Stormwater Associated with Construction Activity - MD	US Environmental Protection Agency / Maryland Department of the Environment
	General Permit for Stormwater Associated with Construction Activity - VA	US Environmental Protection Agency / Virginia Department of Environmental Quality
	Stormwater Management/Erosion and Sediment Control	Maryland Department of Transportation - State Highway Administration Plan Review Division / Maryland Department of the Environment
	Stormwater Management/Erosion and Sediment Control	US Environmental Protection Agency / Maryland Department of the Environment / Virginia Department of Environmental Quality
	Clean Water Act Section 402 (MS4)	Maryland Department of the Environment
	Water Appropriation and Use Permit	Maryland Department of the Environment

Note: ¹The lead agency is responsible for preparing and publishing a single ROD for all Federal agencies with authorization responsibility for the project to support any necessary authorization decisions. The ROD will incorporate the decisions of each such agency, unless an exception to a single ROD is met as set forth in Section XIII or where Federal law provides for the lead agency to issue a combined FEIS/ROD. Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807, <https://www.whitehouse.gov/wp-content/uploads/2018/04/MOU-One-Federal-Decision-m-18-13-Part-2-1.pdf>