



COMMENTS RESPONSE

January 10, 2024

Re: **Maryland Transportation Authority (MDTA) Francis Scott Key Bridge Rebuild**
Agency Interest Number: 4229
Tracking Number: 202461017
Tidal Authorization Number: 24-WL-0757
Water Quality Certification Number: 24-WQC-0028

The Maryland Department of the Environment (MDE or the Department) received your comments regarding MDTA's Joint Federal/State Application for the Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland (Application) received on July 18, 2024, and revised on November 4, 2024. The application proposes to rebuild the Francis Scott Key Bridge within the existing right-of-way (ROW), extending approximately 2.4 miles including approximately 1 mile over the Patapsco River. The bridge will be constructed to current design standards and will result in 9.50 acres of coverage over the Patapsco, 12.71 acres of permanent impact to State Tidal Wetlands, 8.29 acres of temporary construction impacts to State Tidal Wetlands, permanent impacts to 4,336 square feet of emergent nontidal wetlands and 14,415 square feet of the 25-foot nontidal wetlands buffer, and temporary impacts to 6,628 square feet of emergent nontidal wetlands, 32,186 square feet of the 25-foot nontidal wetland buffer, 85 linear feet of a perennial stream and 187 linear feet of an intermittent stream.

A public hearing for the rebuild was held on September 17, 2024, and the notice period for the rebuild ended on October 1, 2024. A second public hearing was held for the addition of the temporary piles and temporary trestles on December 2, 2024, and the notice period for this revision ended on December 17, 2024. Comments were received during both hearings and both public notice periods; and were grouped according to relevance. Those comments received specific to the subject application are outlined below with the following responses:

1) Construction Truck Traffic: Concerns about construction truck traffic in neighborhoods and noise impacts during construction were raised.

MDTA Response: The contractor will be required to submit to MDTA a traffic control plan showing all access and haul routes for review and approval. Access to the site will primarily be via northbound and southbound I-695 as well as industrial corridors such as Broening Highway, therefore there is minimal potential for construction truck traffic to enter neighborhoods.

The contractor will be required to prepare a plan for minimizing construction noise and monitor compliance with the plan throughout construction. The plan will include measures such as the following:

- Equip any internal combustion engine used for any purpose with a properly operating muffler;*
- Conduct truck loading, unloading, and hauling so that noise is kept to a minimum;*
- Route construction equipment and vehicles in areas that will cause the least disturbance to nearby neighborhoods; and*
- Place continuously operated diesel-powered equipment, such as compressors and generators, in areas as far as possible from, or shielded from, noise-sensitive locations including residential properties, sensitive environmental resources, and recreational areas.*

MDTA will coordinate with potentially affected neighborhoods regarding expectations for noise impacts during construction.

2) Community Outreach/Coordination: Commenters expressed a desire to be included in the rebuild process and the importance of transparency and public involvement.

MDTA Response: MDTA is committed to continuing outreach to adjacent communities and mariners throughout the construction of the project. A project-specific website (<https://keybridgerebuild.com/>) has been developed to provide updates regarding construction activities that may affect the public. Relevant updates could include lane closures, utility shutdowns (not anticipated to occur), road closures (not anticipated to occur), significant construction activities, and changes to marine navigation. Impacts to commercial and recreational vessels will also be communicated to waterway users via publication of Local Notices to Mariners and Broadcast Notices to Mariners by the U.S. Coast Guard. <https://www.dco.uscg.mil/Featured-Content/Mariners/Local-Notice-to-Mariners-LNMs/District-5/>

A project-specific phone number, email address and physical address will be monitored by MDTA so individuals and neighboring communities can communicate concerns that may arise from demolition and construction activities:

Email: Info@KeyBridgeRebuild.com

Phone: 800-515-7030

*Mail: Key Bridge Rebuild
2310 Broening Highway
Baltimore, MD 21224*

A system will also be implemented to alert neighboring communities, such as Turner Station, in advance of specialized construction activities such as blasting that could result in impacts. Due to the proximity of Turner Station to the project area, MDTA will coordinate closely with residents throughout the life of the project.

3) Safety: Comments included questions relating to how the new bridge will be safe for drivers.

MDTA Response Safety is paramount for all MDTA construction projects, both for the public and workers. The contractor will be required to have a Safety Plan meeting all requirements from the federal Occupational Safety and Health Act as well as state regulations. With respect to the new Francis Scott Key Bridge, MDTA expects the new bridge to include wider outside shoulders, which will improve traffic flow should a vehicle become disabled on the bridge. Suicide prevention measures are also being evaluated for incorporation into the design of the replacement bridge.

In testimony provided at the public hearing, safety features such as an Automated Towing System, Emergency Safety Station, and Emergency Parking Lot were suggested to be incorporated into the bridge replacement project. These features are not feasible to implement as they would be above and beyond current design standards and therefore not eligible for federal funding.

4) Bike Lanes: One commenter asked about the possibility of adding bike lanes.

MDTA Response: The current environmental documentation and federal funding mechanism for the replacement of the Francis Scott Key Bridge only permit the reconstruction of the bridge to meet current design standards. A shared-use path (SUP) for pedestrians and bicyclists is considered a betterment compared to the original bridge and is not part of the design.

5) Stormwater Management: A commenter highlighted the need for the design to include stormwater management and treatment features that adequately control pollutants.

MDTA Response: MDTA will ensure the proposed bridge design and construction comply with Maryland stormwater management laws and regulations. In accordance with MDE stormwater regulations, the approach to stormwater management will be submitted to MDE for approval prior to construction.

6) Legacy Contaminants: Commenters had concerns about the release of potential legacy contaminants during construction activities and one commenter requested elutriate testing for chromium.

MDTA Response: MDTA is aware of legacy contamination in the Baltimore Harbor and Patapsco River. MDTA will ensure that any dredged material will be tested and disposed of at an approved

disposal facility. MDTA, working with National Oceanic and Atmospheric Administration (NOAA) Fisheries, has also identified Best Management Practices (BMPs) for construction activities that are focused on reducing re-suspension of sedimentation during construction. MDTA will continue to work with NOAA Fisheries throughout construction to minimize sediment re-suspension to the extent practicable.

Department Response: The Board of Public Works provided authorization to the Maryland Port Administration (MPA) to conduct sampling at the site of the Francis Scott Key Bridge in April 2024. The results of this sampling showed no hazardous material or elevated legacy contamination, and the material tested was consistent with material found throughout the Patapsco.

Regarding the request for additional sediment testing: The Department consulted with experts in MDE's Land and Materials Administration and Water and Science Administration. In the Baltimore Harbor sediments, chromium mostly exists in a less harmful form (trivalent chromium) due to the conditions in the sediment, which lack oxygen. These conditions convert more toxic hexavalent chromium into trivalent chromium, which is less harmful to aquatic life and settles in the sediment. Tests show that most of the chromium in the sediments is trivalent, with only a small amount being hexavalent. Water samples also show very low levels of chromium, well below levels that could harm aquatic life. If porewater (water in the sediment) were tested in more detail, it would show even lower amounts of hexavalent chromium.

While elutriate testing would allow for oxygenation of these sediments to simulate resuspension during dredging it is unlikely that trivalent chromium would be oxidized to hexavalent chromium at significant levels as oxygen alone does not drive the transformation under these conditions. Manganese hydroxides, the only known naturally occurring oxidant for trivalent chromium, would need to be at sufficient levels to carry out the transformation, and the aging of trivalent chromium in sediments also makes it less conducive to oxidation. Based on this, the Department does not agree that there is a need for elutriate testing of this material.

While no dredging is authorized as part of this License, any future dredging will be subject to a review that requires additional agency coordination and public comments.

The Department requests BMPs to protect water quality and marine life which is identified in Special Condition 8 of the attached Report and Recommendation (R&R). The Department also requests monitoring to ensure water quality standards are maintained which is identified in Special Condition 10 of the attached R&R.

7) Turbidity Curtains: Commenter requested the use of turbidity curtains to protect SAV in adjacent tributaries of the Patapsco

MDTA Response: Turbidity curtains are particularly effective at limiting the migration of sediments in waters less than 10 feet deep and when the sediments are generated at the surface. They function to allow suspended sediment particles to settle rather than flow to other parts of a water body. The majority of construction activities associated with the Francis Scott Key Bridge Rebuild project will take place in waters deeper than 10 feet where turbidity curtains are not as

effective. MDTA is committed to using appropriate BMPs to minimize sedimentation including using turbidity curtains in waters 10 feet deep and shallower.

Department Response: The Department requests BMPs to protect water quality and marine life which is identified in Special Condition 8 of the attached R&R. The Department also requests monitoring to ensure water quality standards are maintained which is identified in Special Condition 10 of the attached R&R.

8) Best Management Practices to Protect Oysters: Commenters are concerned that long-term construction can impact the oysters that live at Fort Carroll Oyster Bar.

MDTA Response: The nearest known oyster bar to the project area is adjacent to Fort Carroll, approximately 2,200 feet downstream of the project area. BMPs such as the use of turbidity curtains will be implemented to minimize the impact of suspended sediments in the water column and benthic communities. The contractor will be required to develop and implement a Water Quality Monitoring Plan that identifies a variety of BMPs to be implemented to maintain water quality standards throughout the project area. The plan will include parameters to be monitored both upstream and downstream of the project area as well as additional BMPs to be implemented should the standard practices prove to not be sufficient. The water Quality Monitoring Plan will be submitted to and reviewed by the appropriate regulatory agencies for approval.

Department Response: The Department coordinated with DNR and the protections for oysters are reflected in Special Condition 6 and Attachment I of the attached R&R.

9) Sediment and Erosion Control: Commenters requested strict adherence to Sediment and Erosion Control BMPs, management, and enforcement to preserve wetlands.

MDTA Response: MDTA will comply with Maryland Sediment and Erosion Control regulations including seeking MDE approval of the sediment and erosion control plan prior to construction. Sediment and erosion control measures will be inspected daily and maintained continuously in effective operating condition during construction and until such time as they are removed with permission from the MDE compliance inspector.

Department Response: The Department recommends to BPW that the Licensee is required to submit an Erosion and Sediment Control Plan which addresses protecting water quality, maintenance of stream flow, and dewatering. This appears as Special Condition 13 in the attached R&R.

10) Marine Mammals and Migratory Fish: Commenters were concerned that the long-term construction impacts, particularly noise impacts, can disrupt or kill marine mammals and migratory fish.

MDTA Response: As marine mammals are known to be present within and near the project area, MDTA and the contractor are in the process of performing the appropriate analysis to determine potential impacts on species protected under the Marine Mammal Protection Act (MMPA). The analysis being performed includes the anticipated means and methods to be used during demolition as well as reconstruction of the new Francis Scott Key Bridge. The results of the analysis will be presented to NOAA Fisheries to confirm the level of coordination required to comply with the MMPA.

MDTA is working closely with NOAA Fisheries and the Maryland Department of Natural Resources (MDNR) to protect migratory fish species to the extent practicable while meeting the project schedule. Time of year restrictions are the best way to avoid migratory fish impacts and will be used whenever possible, however, the emergency nature of this project may require some construction activities to take place during fish migration. MDTA will coordinate with NOAA Fisheries, MDNR, and the Federal Highway Administration (FHWA) to identify appropriate aquatic noise mitigation BMPs and construction practices including maintenance of a zone of safe fish passage to limit impacts to migratory fish throughout the project.

Department Response: The Department coordinated with resource agencies including the Department of Natural Resources (DNR) and the National Marine Fisheries Service (NMFS). Due to this coordination, the License will include conditions to protect marine life. The attached R&R Special Condition I requires the Licensee to submit a Tidal In-Water Construction Plan (TIWC) that will include BMPs, zones of safe fish passage, and hold points. Special Condition 9 requires compensation for losses of marine life.

11) Mitigation: Commenters wanted to ensure that mitigation will replace values for all temporary and permanent impacts including SAV impacts, oyster impacts, and fish spawning habitat.

MDTA Response: Several potential mitigation options have been identified and presented to state and federal regulatory agencies as options to fulfill compensatory mitigation requirements for unavoidable impacts to regulated resources. Discussions with the agencies on the amount and type of mitigation to be provided are ongoing. Mitigation proposed to offset unavoidable impacts to certain regulated resources such as tidal waters are evaluated with consideration of the functional uplift they provide. Potential compensatory mitigation projects could include, but are not limited to ghost crab pot removal, oyster reef restoration (either through creation, expansion, or enhancement by way of seeding), tidal marsh restoration, living shoreline design, capping of contaminated sediments, enhancement of fish passage, etc. A combination of mitigation options could be used to fulfill the compensatory mitigation requirements. As previously noted, discussions regarding mitigation are ongoing and additional mitigation opportunities could be identified.

Department Response: The Department will be requiring mitigation for impacts related to the permanent fill placed in the State tidal wetlands in accordance with COMAR26.24. On the attached R&R, Special Condition 20 requires mitigation.

After reviewing the proposed activities, the Department determined that MDTA is within its riparian rights to rebuild the Francis Scott Key Bridge. The Department determined that the rebuild activities

outlined in the attached R&R are consistent with State law and regulations and are a reasonable exercise of the Applicant's riparian rights. The applicant has demonstrated that alternatives to the proposed rebuilding methods are not feasible, and they have committed to conducting the rebuild activities using best management practices that protect both the Citizens of the State of Maryland and the marine life of the Chesapeake Bay. They have further committed to robust community engagement to address the concerns of community stakeholders throughout the process. The Department has decided to send a favorable report recommending the authorization for the proposed activities to the Maryland Board of Public Works (BPW). Please be aware that this report is only a recommendation to BPW for the issuance of a Wetlands License. The BPW will make the final State decision to issue or deny the Applicant's Wetlands License. If you would like to submit comments to the BPW, please contact the Wetlands Administrator, Bill Morgante, at 410-260-7791 or bill.morgante@maryland.gov. Thank you again for your comments. If you have any questions or if I can assist you in any way, please do not hesitate to contact Emily Dolbin at Emily.dolbin@maryland.gov or 410-537-3745 with any questions. A copy of the signed Report and Recommendation is attached and can be found on the following website: mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/FrancisScottKeyBridge.aspx

Sincerely,



Matthew Wallach
Tidal Wetlands Division
Maryland Department of the Environment

Cc: Bill Morgante, BPW