

Stormwater Pond Fencing Requirements



DEPARTMENT OF
**ENVIRONMENTAL
PROTECTION**
MONTGOMERY COUNTY • MARYLAND

Working together for a cleaner, greener
economically vibrant community

Watershed Management Division
Stormwater Facility Maintenance

2016

Stormwater Pond Fencing Requirements

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Purpose

The Montgomery County Code, Chapter 19, Article II, Section 19-28(d)(2), Inspection and maintenance of stormwater management systems requires the Montgomery County Department of Environmental Protection (MC DEP) inspect fences or other pond safety devices. When a deficiency is discovered, MC DEP must require property owners to correct the deficiency.

The Montgomery County Code **does not require fences to be installed around ponds**. However, if fences exist around a pond or elsewhere as part of a stormwater management facility, fences shall be inspected and maintained in a manner acceptable to MC DEP.

Additionally, the Montgomery County Code, Chapter 36, Pond Safety states that any publicly accessible pond must have warning signs posted on all sides of a pond and at any major approach to the pond, such as a path; *if not surrounded by a continuous, permanent fence or barrier (at least four feet high with no opening wider than two inches) within 100 feet of the shoreline.*



Subject to Change Disclaimer

The requirements, specifications, regulations, and procedures in this document are subject to change without prior notice, if necessary, to keep MC DEP policies in compliance with Local, State and Federal laws.

Definitions

For purposes of pond safety, the following definitions shall apply to this document.

- Dry Pond:** A pond that does not permanently retain water.
- Fence:** A four foot (4') high barrier with no opening of more than two inches (2") in width and four inches (4") in height at any point.
- MC DEP:** Montgomery County Department of Environmental Protection

- MC DOT:** Montgomery County Department of Transportation
- MC DPS:** Montgomery County Department of Permitting Services
- M-NCPPC:** Maryland National Capital Parks and Planning Commission.
- MSHA:** Maryland Department of Transportation, State Highway Administration
- Publicly Accessible Pond:** A water impoundment that:
- A. Retains a permanent pool more than 24 inches deep and 20 feet across at its widest point and is accessible to the public to the extent provided in Executive regulations.
 - B. Is not a swimming pool as defined in Chapter 51 of the Montgomery County Code, and
 - C. Is not surrounded by a continuous, permanent fence or barrier (at least four feet high with no opening wider than two inches) within 100 feet of the shoreline.
- 100 Year Flood Plain:** A relatively flat or low land area adjoining a river, stream, pond, stormwater management structure, or watercourse subject to partial or complete inundation by the 100-year flood.
- Warning Sign:** A pond safety measure that at minimum, must warn that entering the water to swim, skate, or boat is unsafe and must be maintained in good condition by the person who owns or controls land that includes a publicly accessible pond.
- Wet Pond:** A pond that permanently retains water which exceeds a depth of twenty-four inches (24") at any location.
- Wetland Pond:** A pond that permanently retains water which does not exceed a depth of twenty-four inches (24") at any location.
- WSSC:** Washington Suburban Sanitary Commission

Permissions and Permits

- A. All fences require a signed and recorded Declaration of Covenants (see Attachment A).
- B. The erection of fences across and/or through public easements and/or rights-of-way requires permission from the easement and/or right-of-way owner (MC DEP, MC DOT, MSHA, WSSC, M-NCPPC, etc.).
- C. All fences require a building permit from the DPS.
<http://permittingservices.montgomerycountymd.gov/DPS/building/FenceAndRetainingWallPermit.aspx>
- D. Any fence erected within the 100-year floodplain requires a Floodplain District Permit from MC DPS.
<http://permittingservices.montgomerycountymd.gov/dps/waterresource/FloodplainDistrictPermit.aspx>

Fence Location Requirements

All fences shall be erected to completely surround the pond, storm drain out falls into the pond and the riser structures, except as may be noted below.

1. Generally, fences shall be erected two feet from the inside edge of the “bench” where provided
2. Adequate clearances shall be maintained between any fence and riser.
 - a. A ten foot (10’) minimum clearance shall be provided on both sides of the riser; and,
 - b. A five foot (5’) minimum clearance shall be maintained behind the riser.
3. Gates shall be provided for maintenance access.
 - a. A twelve foot (12’) minimum wide double gate shall be provided across the maintenance access; and,
 - b. A three foot (3’) minimum wide single gate shall be provided behind the riser structure.
 - c. All gates shall be padlocked.
4. Where fences are erected on slopes and/or across depressions, swales, etc., the fence shall be constructed so as to prevent access underneath.
5. For ponds where the riser structure is designed to accommodate (pass) the 100 year design storm and there is no emergency spillway, fences may be constructed/installed on top of the Dam.
6. For ponds where an emergency spillway exist, fences cannot be erected across the emergency spillway.
 - a. Fences shall be installed two feet (2’) from the inside edge of the bench where a bench exists.
 - b. Where emergency spillways exist and no bench is provided, fences shall be installed three feet (3’) upslope from the permanent pool elevation.
7. Intermittent fence sections are permitted as long as signs are posted where fencing does not exist.
8. Fences shall not be constructed across creeks, streams, channels, or other open drainage-ways. Fences shall be terminated at the “top of bank” at all creeks, streams, channels and other primary open drainage-ways
 - a. Where fences are terminated at creeks, streams, channels and other open drainage-ways, a metal sign, a minimum of eighteen inches (18”) in width and a minimum of twelve inches (12”) high shall be securely attached to the fence that reads:

**STORMWATER MANAGEMENT AREA
NO TRESPASSING**

Fencing Specifications

1. All fence shall be chain link fence with a minimum height of forty-eight inches (48").
 - a. All chain link fence materials should comply with the latest edition of MSHA Standard Specifications Section 914 and all addenda thereto.
 - (1) Chain link fence fabric shall be two inch (2") mesh woven from galvanized wire minimum gauge # 11.
 - b. All chain link fence shall be constructed/installed in accordance with MSHA Standard Drawing numbers 690.01, 690.11, and 692.01 (Attachments B, C and D), modified for forty-eight inch (48") height.
2. Alternative fence types.
 - a. When requested by the pond's landowner, the County will review request for an alternate type of fence to substitute for chain link fence. Any alternative type of fence must meet the fence definition as defined in these guidelines.
3. Where approved, pressure treated split-rail fence with welded wire mesh may be substituted for a chain link fence.
 - a. Split-rail fence shall have a minimum of three (3) rails, equally spaced. A minimum height of forty-eight inches (48") shall be provided from finished grade to the top of the rail. Spacing between fence posts shall not exceed ten feet (10').
 - b. Welded wire fence used in conjunction with all split-rail fence must be vinyl coated, fourteen (14) gauge, forty-eight inches (48") in height with openings no greater than two inches (2") in width and four inches (4") in height. Welded wire fencing must be firmly attached to the outward side of the split rail fence and the two inch (2") dimension of the wire fence must be perpendicular to the fence post.
 - i. The color of the vinyl coating shall be black, green or brown.

Plan Requirements

1. Fences shall be shown on all as-built plans at the following locations:
 - a. Plan view of Pond, and
 - b. Included in the profile of the principle spillway.
2. Fence details and specifications shall be provided to MC DEP. Please see Attachment E and F for example drawings.

Inspection

In order to comply with the [Montgomery County Code and Code of Montgomery County Regulations](#) and their intent, the following procedures and guidance will be followed by MC DEP inspection and enforcement personnel.

When a stormwater management facility maintenance inspection is performed, any existing fence surrounding a pond or fence providing protection from a potential hazard (e.g. fence on top of an endwall) will be visually inspected.

If inspection reveals any of the following deficiencies, the property owner shall be required to correct the deficiency.

- a. Missing sections of fence; rails, posts, mesh, etc.
- b. Sagging, leaning or “out of plumb” fences
- c. Unlocked or dysfunctional access gates
- d. Any other deficiency MC DEP determines that requires correction.

Compliance time for any fence repair shall be 30 calendar days. Maintenance of fences is a non-structural repair in most cases. MC DEP generally will not repair fences.

Non-Structural Fence Maintenance Examples:

- Maintenance and repair of perimeter fences around ponds.
- Maintenance and repair of gates associated with perimeter fences around ponds.
- Any fences on top of a private storm drain headwall or endwall.

Structural Fence Maintenance Examples:

- Maintenance and repair of fences and gates:
 - On top of any headwall or endwall connected to pond outfall barrel.
 - On top of any weir wall acting as a stormwater facility outlet structure.
 - Any fence solely surrounding or providing public protection from access to a riser or other stormwater facility outlet structure.
 - Any fence acting as a “Beaver Deceiver”.

Signs in lieu of fences

If a wet pond is not surrounded by an acceptable chain link or split rail fence as noted above, then Warning Signs shall be installed in accordance with Chapter 36 of the County Code and the Code of Montgomery County Regulations.



Privately fabricated signs do not require MC DEP indication.

Pond Warning Sign requirements

If a wet pond is not surrounded by MC DEP approved fence, warning signs shall be installed in accordance with Chapter 36 of the County Code.

The MC DEP will provide pond warning signs for residential stormwater management ponds. If the pond is located on a commercial, industrial or institutional property, the DEP will specify the wording and graphics for the sign. Generally, a minimum of four (4) signs will be required for a wet pond and shall be erected on the north, south, east and west sides of the pond.

You may email your pond plan to the MC DEP (AskDEP@MontgomeryCountyMD.gov) and MC DEP can determine the number and locations of required fence signs. An MC DEP Inspector can meet the sign installation contractor on site to furnish the signs and verify proper sign placement locations.

The signs are metal, 18" tall and 24" wide. They must be installed on either metal posts ('U' channel, 2 lbs/LF or 2" square steel tube, 12 gauge) or 4"x 4" wooden posts. The wooden posts can be installed per Maryland State Highway Administration (MSHA) Standard Detail 812.01 except the posts only need to be buried 30" into the ground. The signs must be attached with bolts (3" long lag screws for wood posts). The bottom of the sign must be six feet (6') above the ground.

Signs mounted in the water shall be affixed to a metal post. The post must be driven five feet (5') into the pond bottom and the bottom of the sign must be a minimum of three feet (3') above the normal water surface elevation.

Signs mounted on a fence shall be fastened to a fence post, either with a bolt through the post or with a lag screw on a wooden post.

Compliance time for the posting of Pond Warning signs shall be 30 calendar days.

Attachment A: Declaration of Covenants

PROPERTY ACCOUNT NO. _____

ADDRESS: _____

DECLARATION OF COVENANTS

This DECLARATION, made this day _____ of _____, 20____, by and between _____, its successors and assigns (hereinafter called the (Name of Declarant) “Declarant”) and Montgomery County, Maryland, its successors and assigns (hereinafter called the “County”).

WITNESSETH:

WHEREAS, the Declarant desires to make certain improvements within the public stormwater management easement, being part of that parcel of land conveyed by _____ to _____, by deed dated _____ (Name of Previous Owner) (Name of Declarant) and recorded at Liber _____ Folio _____ and recorded at among the Land Records of Montgomery County, Maryland, said improvements consisting of _____ (Description of Improvements) and

WHEREAS, the County shall agree to said improvements promptly upon the execution and due recording of this DECLARATION among the Land Records of Montgomery County.

NOW, THEREFORE DECLARANT covenants the following:

- 1. The Declarant agrees to indemnify and hold harmless the County against any and all actions, suits, claims, demands, liability, loss or damage arising out of or in connection with the installation, maintenance or use of the above described improvements.

2. The Declarant agrees, continually and at all times, to maintain in good and safe condition the above described improvements in the public stormwater management easement.
3. The Declarant agrees that should the County order any of the said improvements in whole or in part to be removed, such removal shall be at the expense of the Declarant or the subsequent owner of the premises, and that the Declarant will save the County harmless for any expenses incurred therefrom. Should the County, in order to maintain its facilities within the said public stormwater management easement, be required to remove said improvements, the County will not be required to replace said improvements and the Declarant will save the County harmless for any damages that may occur to said improvements.
4. Upon execution and recording, this DECLARATION shall run with the land and shall become a binding instrument upon the Declarant and any subsequent representatives, successors or assigns of the Declarant. This Declaration cannot be terminated without the County's approval.
5. The Declarant(s) agree that they will be responsible for any damage to any existing storm drainage and/or stormwater management structures and/or storm drainage pipes associated with the installation and/or presence of said improvements.
6. This Declaration shall remain in full force and effect until such time as the improvements are removed in their entirety by the owner or subsequent owner from said public right-of-way. Release of this Declaration may not occur without written approval from the County. The County may, in its sole discretion, unilaterally terminate this Declaration at any time.

In TESTIMONY WHEREOF, the said Declarant has hereunto set its hand and seal the day and year first above written.

ATTEST:

FOR THE DECLARANT

Signature

Signature

(SEAL)

Printed Name

Printed Name

Title

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this _____ day of _____, 20____, before the undersigned officer, a notary public in and for the State and County aforesaid, personally appeared _____, authorized agent or officer of

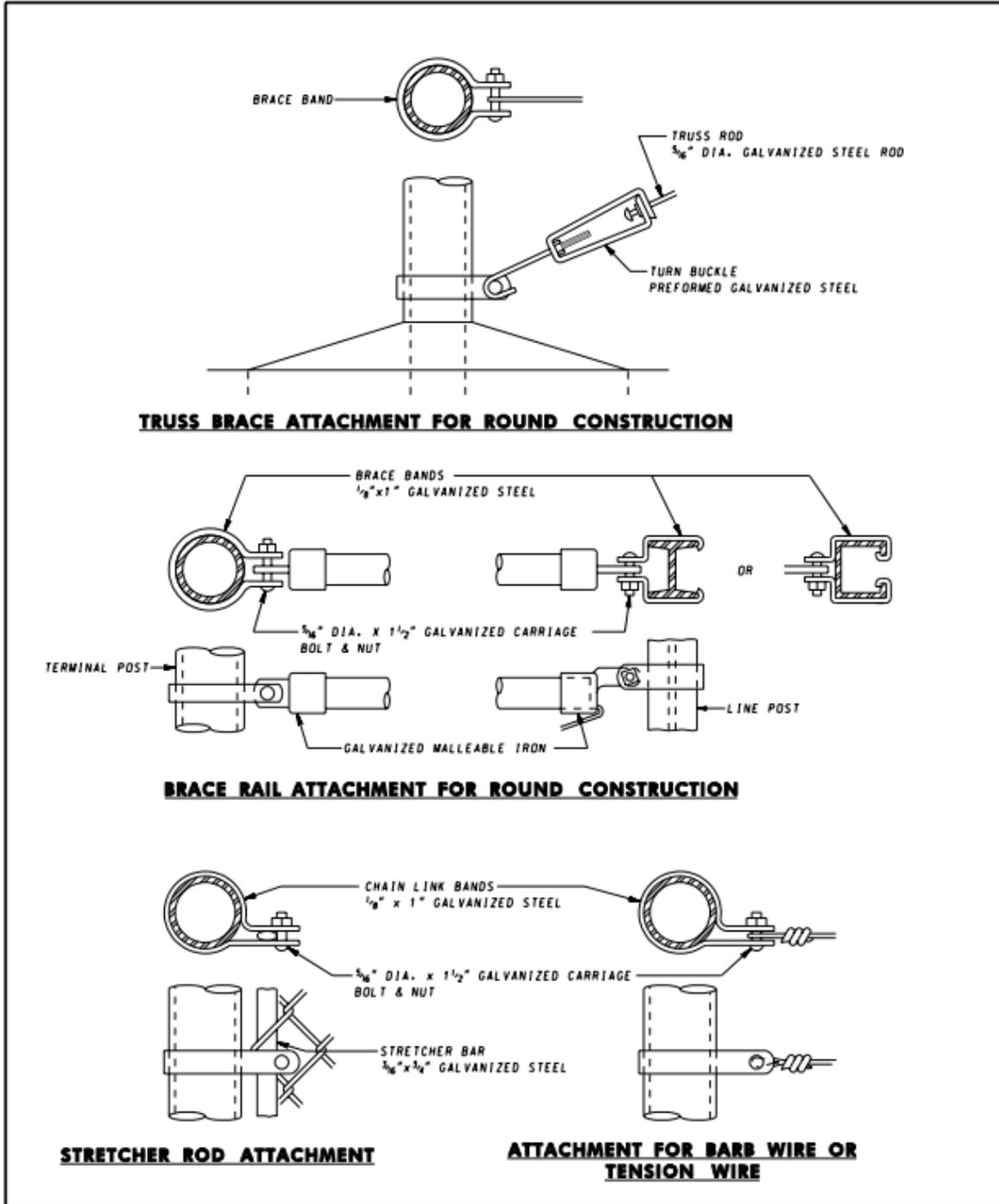
_____, and known to me or proven to be the person whose name is subscribed to the within instrument and did acknowledge that he executed the same for the purposes therein contained and signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Notary Public) (SEAL)

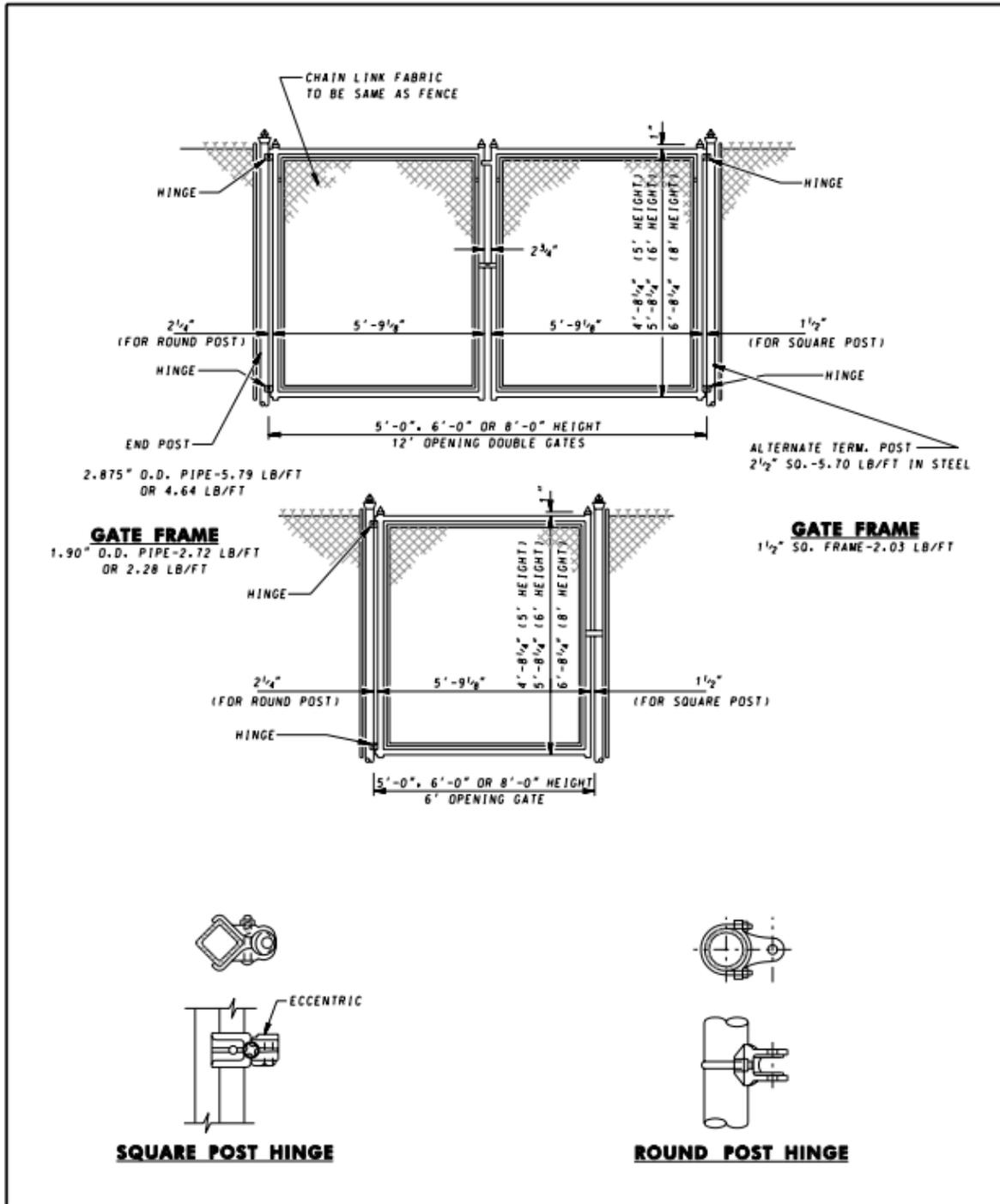
My Commission Expires: _____

Attachment C: MSHA Standard Drawing 690.11



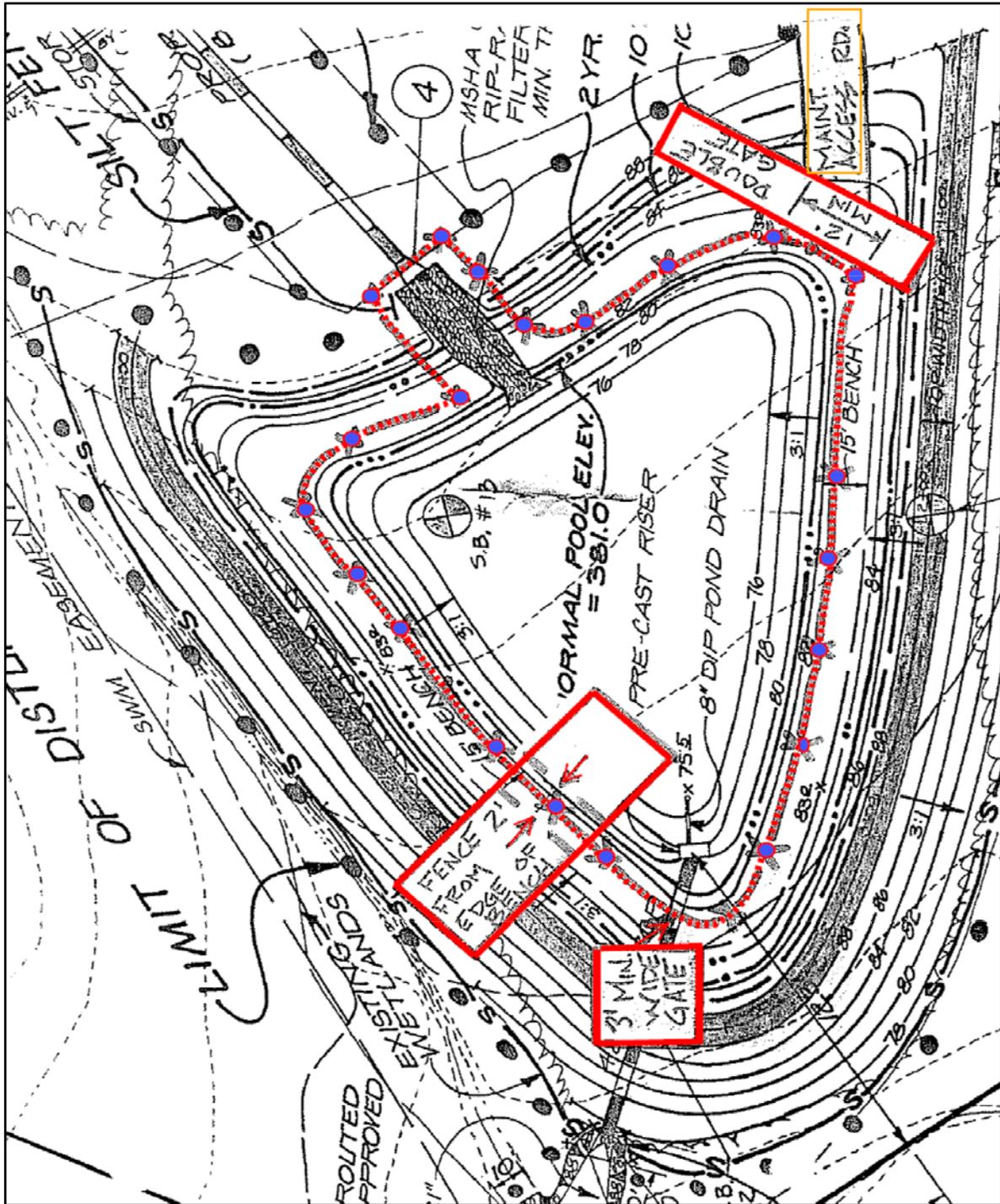
SPECIFICATION	CATEGORY CODE ITEMS	<p>Maryland Department of Transportation STATE HIGHWAY ADMINISTRATION STANDARDS FOR HIGHWAYS AND INCIDENTAL STRUCTURES CHAIN LINK FENCE BRACE & ROD ATTACHMENTS- ROUND CONSTRUCTION STANDARD NO. MD 690.11</p>																				
APPROVED	<i>Kate G. McCall</i> DIRECTOR - OFFICE OF HIGHWAY DEVELOPMENT																					
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	10-1-01	REVISION	8-1-94																			
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SHA	State Highway Administration																					

Attachment D: MSHA Standard Drawing 692.01



SPECIFICATION 615		CATEGORY CODE ITEMS		Maryland Department of Transportation STATE HIGHWAY ADMINISTRATION STANDARDS FOR HIGHWAYS AND INCIDENTAL STRUCTURES CHAIN LINK FENCE GATE DETAILS STANDARD NO. MD 692.01	
APPROVED		 DIRECTOR - OFFICE OF HIGHWAY DEVELOPMENT			
		APPROVAL - SHA REVISIONS APPROVAL 12-1-70 REVISION 10-1-81 REVISION REVISION	APPROVAL - FEDERAL HIGHWAY ADMINISTRATION APPROVAL 9-14-71 REVISION 4-3-85 REVISION REVISION		

Attachment E: Example Drawing



Attachment F: Example Drawing

