

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on this 28 day of ~~September~~ by and between the DEPARTMENT OF NATURAL RESOURCES (the "Department" or "DNR") and the CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (the "Commission" or "CAC").

RECITALS

WHEREAS, DNR is an independent agency responsible for the planning, funding and management of development activities on DNR owned lands in;

WHEREAS, under COMAR 27.02.05, the Commission has authority over State agency actions resulting in development on State-owned lands in the Critical Area;

WHEREAS, the Annotated Code of Maryland, Natural Resources Article §§ 8-1801 – 8-1817 establishes the Commission and sets forth its duties and authority for implementing the State's Critical Area Protection Program for the Chesapeake and Atlantic Coastal Bays;

WHEREAS, the Commission has established Criteria for development undertaken by State agencies in the Critical Area even though the development has not been approved by a local jurisdiction with an approved Critical Area Program; and

WHEREAS, the Commission has authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands within the Critical Area based on the Commission's assessment of the extent to which the project conforms with COMAR 27.02.05, and to grant general approval for certain programs or classes of such activities, pursuant to COMAR 27.02.05.01.B.

NOW THEREFORE, be it resolved that the Parties named above hereby mutually agree as follows:

1 PURPOSE OF AND BACKGROUND FOR THIS MOU

1.1 The purpose of this MOU is to clarify the terms and procedures by which DNR will conduct development activities in the Critical Area that qualify for general approval, and to ensure that any such activities are consistent with Critical Area law and the Commission's criteria, including but not limited to criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake and Atlantic Coastal Bays. This MOU addresses the following items:

- 1.1.1 The process to be used by both parties in order for DNR to gain General Approval of the Commission for projects in the Critical Area; and
- 1.1.2 The responsibilities of both parties with regard to such General Approvals.

2 PROCESS:

2.1 The Office of the Secretary is responsible for ensuring all units of DNR coordinate and submit any activity that qualifies under this MOU to Commission staff for review. The units identified below are responsible for forwarding those projects to the Commission during the Department's internal review process timeframe. Additional units may from time to time be tasked with coordinating internal review and those units shall be responsible for ensuring coordination is made with the Commission.

Development activities on DNR lands are coordinated through the following units/divisions:

- Resource Assessment Service – Environmental Review Program
- Maryland Park Service
- Wildlife & Heritage Service
- Maryland Forest Service
- Engineering & Construction
- Chesapeake & Coastal Service
- Fisheries Service

The Office of the Secretary or the Secretary's designee shall notify Commission staff of any staffing or other process changes to internal review of projects. Depending on the type and scope of change Commission staff may recommend modifying this MOU as allowed in Section 6 below.

2.2 DNR will forward all projects intended to qualify as Category I activities to the primary CAC contact by email. DNR will specify that the activity qualifies as Category I and note any potential required tree replacement. When tree clearing limits are exceeded DNR will provide justification as outlined in Exhibit A.

The primary CAC contact will respond within 5 working days. The response will either concur with the Category I designation, or state that the activity does not qualify as Category I and additional guidance will be provided.

2.3 DNR will forward all projects intended to qualify as Category II activities to the primary CAC contact by email. The project application will include a project description and all required Critical Area information as outlined in Exhibit B. Where required, DNR will provide written justification for exceeding disturbance thresholds by minor amounts or for Special Projects as outlined in Exhibit A.

CAC staff will request any additional information within 10 working days of receipt. Upon receipt of complete information CAC staff will provide final review within 10 working days. Final review may include a request for changes, conditions, or notice that the project will require review and approval by the Commission.

2.4 DNR shall immediately notify the Commission of any changes in the plans as approved or of changes that occur during construction of the project. DNR shall afford Commission staff the opportunity to review any such changes and make recommendations based

on assessment of the extent to which the project conforms with this MOU. The extent to which the project changes could result in further review by the full Commission.

2.5 The Commission shall notify DNR and the DNR representative on the Commission if the Commission becomes aware of an alleged violation of local, state or federal environmental laws or regulations, including erosion and sediment control and stormwater management during construction or maintenance activities of any approved project. DNR shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until any identified violation is resolved.

2.6 Staff of the Commission and DNR shall meet on an as-needed basis to address issues such as the project design and review process, project construction, and enforcement, including but not limited to standards for clearing and stabilization, sequencing of construction activities, off-site options for stormwater management quality control, priorities for training, or water quality monitoring. Visits to construction sites may be a part of the process as needed.

3 **MITIGATION BANKING:** The parties agree that DNR may create a mitigation bank where DNR can accumulate credits for providing environmental mitigation over and above the amount required by the Commission for a particular project. The Commission may approve mitigation banks, allowing predetermined credits for mitigation to be applied to future projects. The process, terms, and conditions of such banks will be set forth in separate agreements.

4 **PUBLIC SAFETY:** Certain situations and conditions jeopardizing public safety and welfare may require DNR to take emergency action in the form of development in the Critical Area. DNR may undertake the necessary remedial actions without prior Commission approval; however, DNR shall notify the Commission of the development activities as soon as possible and shall comply with any Commission determination regarding necessary actions to ensure compliance with the Commission's project approval procedures.

5 **REPORTING REQUIREMENTS:** By **January 31st** of each year, DNR shall provide the Chair of the Commission with a report containing those projects that qualify under Category II – Minor Exceedance or Category II – Special Projects for the prior calendar year. The report shall list the following information:

- Description, including purpose, of the project;
- Location of the project;
- A site plan on letter sized paper;
- A summary of proposed impacts;

This information will be made available to members of the Commission at the next scheduled Critical Area meeting for review and comment. The Commission reserves the right to limit or expand the breadth of projects that qualify under Category II – Minor Exceedance or Category II – Special Projects.

6 **COMPREHENSIVE REVIEW & MODIFICATIONS TO SCOPE:** This MOU and its Exhibits and Attachments may be amended at any time. Modifications must be made in.

writing and must be agreed upon by both parties. By September 30th, 2018 the Commission and DNR shall comprehensively review this MOU and make any necessary updates or changes.

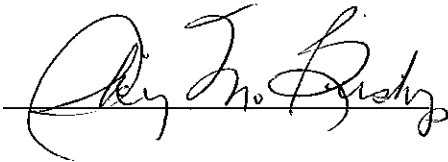
7 **MERGER:** This MOU and its Exhibits and Attachments embody the whole agreement of the parties. There are no promises, terms, conditions or obligations referring to the subject matter other than those contained herein.

8 **TERMINATION:** Any party may terminate this MOU with written notice given 90 days in advance to all other parties. By this Agreement, the Commission grants a General Approval to DNR as set forth herein pursuant to COMAR 27.02.03 and retains all authority to modify or revoke this general approval.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding by causing the same to be signed as of the date first set forth above.

WITNESS

**CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS**



By: 
Charles C. Deegan, Chairman

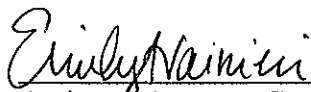
DEPARTMENT OF NATURAL RESOURCES



By: 
Mark Belton, Secretary
Department of Natural Resources

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


Assistant Attorney General
Critical Area Commission



Assistant Attorney General
Department of Natural Resources

EXHIBIT A

Conditions for General Approval of Department of Natural Resources Projects

Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the Commission may grant General Approval to State agencies for programs, activities, and classes of development on State-owned lands in the Critical Area. Granting of a General Approval by the Commission allows implementation of the approved program, activity or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05 and the requirements of COMAR 27.02.05.01.B.

For purposes of this General Approval, permitted activities in the Critical Area are divided into two classes: **I. Minor Activities** and **II. CAC Staff Review Projects**.

Projects proposed for General Approval must meet the described conditions, according to the project Categories defined below.

Category I: Minor Activities

The purpose of Category I projects is to allow activities that maintain the life expectancy of existing facilities and to clarify standards and requirements for a variety of different activities that may create disturbance in the Critical Area, but are not typically considered development. The 'Eligible Projects' list provided below indicates those types of projects that are permitted under Category I.

Any project that qualifies under Category I is permitted in all Critical Area designations and within the Buffer. No more than 5 trees may be removed and every tree removed must be replaced with one 3/4-inch caliper native tree. Trees removed from the Buffer must be replanted within the Buffer. No other mitigation is required. If more than 5 trees are required to be removed or if trees cannot be replaced within the Buffer, the project must be submitted to Commission staff for review and approval. Information justifying the removal of trees or alternative planting location must be provided for staff consideration.

DNR may propose additional project types to be added to the eligible project list below. DNR must demonstrate that the project types added will not change a drainage pattern, clear forest, or require a stormwater permit from Maryland Department of the Environment. Upon concurrence by CAC staff, the Chairman will update the Commission at the next scheduled Commission meeting of any additions to the 'Eligible Activity' list.

A. ELIGIBLE ACTIVITY:

1. Patching, resurfacing, and/or milling of roadways (including potholes and malfunctioning joints), intersections, bicycle facilities, parking lots, and/or sidewalks where no ground disturbance is proposed. Resurfacing includes adding gravel to existing gravel or other unconsolidated surfaces. Resurfacing does not include removal of consolidated surfaces and replacement with other consolidated surface, or removal of consolidated surfaces and replacement with permeable materials. Resurfacing does not include expansion of any area.

2. Maintenance of natural surface trails provided the trail remains a natural surface and meets DNR's sustainability criteria. Trail maintenance includes installation of puncheons and stone dust where necessary.
3. Replacement of septic systems in order to upgrade for removal of Nitrogen.
4. Repair and maintenance of existing shore erosion control structures, including living shorelines, where a tidal wetlands authorization is not required.
5. Replacement of existing bulkheads provided the Department has completed the CAC Replacement Bulkhead Buffer Management Plan form.
6. Dam maintenance, stabilization and repair.
7. Repair and maintenance of existing stormwater management facilities.
8. Removal of pavement or structures provided the area is stabilized with vegetation.
9. Landscape planting and landscape maintenance including minor grading to restore areas of lawn.
10. Waterfowl impoundment construction provided that no Habitat Protection Areas are impacted, other than the Buffer.
11. Archaeological testing.
12. Sampling for scientific research under an approved protocol.
13. Phragmites removal.

Category II: CAC Staff Review Projects

Category II projects include both new development activities and redevelopment activities that may involve replacement or repair of existing facilities. DNR must submit these projects individually to Commission staff for concurrence that the project meets the requirements of the MOU.

Early coordination with Commission staff on Category II projects is required in order to determine if the proposed project is eligible under the MOU, or if the project will require full Commission review and approval. CAC Staff will respond within 30 days of submission by the Project Review Division. If the proposed development project results in a combination of habitat impacts or includes multiple elements of projects listed in this MOU, the Commission staff reserves the right to bring a project that may appear to qualify under the MOU to the full Critical Area Commission for review and approval. **Additionally, if a project scope changes after a project is found consistent with the MOU, DNR must contact Commission staff who may require resubmission.**

A. ELIGIBLE PROJECTS:

ROUTINE MAINTENANCE AND RELATED WORK

1. Repair, modification, replacement, and/or new installation of:
 - a. Fencing
 - b. Signs
 - c. Lighting
 - d. Above ground tanks on concrete pads.
2. Repaving, replacing and/or expanding:
 - a. Parking lots
 - b. Driveways, roadways
 - c. Boat launches
 - d. Sidewalks, paved trails
3. Repair, modification and/or replacement of:
 - a. Piers, including decking and pilings
 - b. Patios
 - c. Decks
 - d. Boardwalks, footbridges, stairs
 - e. Culverts
 - f. Utility lines, including: electric, sewer, water, telephone, marine fuel, and fiber-optic lines
 - g. Athletic fields
4. Replacement of impervious surfaces with permeable surfaces.
5. Upgrades to existing facilities in order to meet requirements for Americans with Disabilities Act.

NEW FACILITY PROJECTS

1. Piers
2. Patios
3. Decks
4. Boardwalks, footbridges, stairs
5. Sidewalks/paved trails
6. Parking lots
7. Driveways/roadways
8. Structures
9. Boat launch and boat ramps

B. QUALIFYING PARAMETERS:

Projects eligible for Category II are limited to the following thresholds and specifications:

1. The proposed total limit of disturbance may not exceed 5,000 square feet (sf).
2. The total net increase of lot coverage may not exceed 1,000 sf.
3. Forest and developed woodland clearing may not exceed 2,000 sf.
4. Impacts to the Buffer are permitted for projects listed below, provided DNR includes a proposed Buffer Management Plan for any required mitigation;
 - a. Redevelopment, including minor expansion, of existing facilities located within the Buffer;
 - b. New water-dependent facilities, riparian access, or utility lines; and
 - c. Any other small project type provided DNR submits a written explanation that includes the following elements:
 - i. Information documenting why the project must be located in the Buffer;
 - ii. Information describing how impacts to the Buffer have been minimized.
5. No impacts to Habitat Protection Areas other than the Buffer, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) DNR adheres to all conditions and guidance provided by any Maryland Department of the Environment (MDE) authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable).
6. For any in-stream work, an MDE Waterway Construction Permit must be submitted by the applicant. Additionally, for any work that requires authorization under MDE Tidal Wetlands Program a copy of the authorization must be submitted by the applicant.
7. The Department has identified, and where necessary incorporated, climate resilient practices in order to avoid or minimize environmental and structural damage

associated with a coastal hazard, extreme weather event, sea level rise, or other coastal impact per COMAR 27.02.05.02.A(1).

8. The project will not impact a medium or high priority sea level rise wetland adaptation area as shown on Maryland's Coastal Atlas.

C. MINOR EXCEEDANCE

DNR may request approval of an otherwise eligible Category II project that exceeds the thresholds listed in #1 through #3 above. DNR must provide a written justification that explains why the project should be reviewed under this MOU despite exceeding disturbance, size, or Buffer encroachment thresholds by minor amounts. The written justification must specifically address why the proposed project cannot meet the Category II thresholds. CAC staff must concur that the project meets the intent of Category II, which is for minor development activities, or the project will require approval by the Critical Area Commission.

D. MITIGATION

1. Tree mitigation is required at a 1:1 ratio, using 3/4-inch caliper native trees.
2. Unless otherwise outlined in the Special Projects List below, Buffer mitigation is required at the following ratios:
 - a. 1:1 for the area of permanent disturbance, including in-kind replacement, of an existing developed area;
 - b. 2:1 ratio for the area of permanent disturbance for a newly developed water-dependent facility, new riparian access or new utility crossing; and
 - c. 3:1 ratio for the area of permanent disturbance for any other project as described under part 4(c) in Qualifying Parameters.
3. Critical Area Stormwater Management (10%) = Equivalency based on list of practices.

E. SPECIAL PROJECTS

The projects listed below include a variety of linear projects, stormwater management projects — and shoreline projects. Due to the nature of these projects, the threshold limits and mitigation requirements may be varied from that described above. This part of the exhibit outlines different specific requirements that must be met for each project type, including a written justification that outlines why a project must exceed specific thresholds and how DNR has minimized impacts. DNR may propose additional project types to be added to the eligible special project list below. Upon concurrence by Commission staff, the Chairman will update the Commission at the next Commission meeting of any addition.

1. Installation of new utility lines, including: electric, sewer, water, telephone, marine fuel, and fiber-optic lines:
 - a. New utility lines are to serve existing facilities only. Utility lines associated with new development must be reviewed with the new development.
 - b. No threshold for limit of disturbance or clearing.
 - c. Impacts are permitted in the Buffer.

- d. Written justification is required if more than 2,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - e. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
2. Replacement of existing culverts
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required if more than 2,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - d. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
3. Installation of new unpaved (natural surface) trails:
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required if more than 2,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - d. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
4. Conversion of unpaved trail to a paved trail, or widening of an existing paved trail:
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required outlining how the trail design meets a required use and specifying how impacts to the Buffer and forest have been minimized to the maximum extent practicable. Additionally, if the proposed trail does not use permeable surfaces DNR shall provide a written explanation as to why such surfaces are not feasible for the project.
 - d. Mitigation is required as specified for all Category II projects (existing developed area).
5. Stormwater retrofit and green infrastructure practices that are installed to treat previously untreated impervious surfaces and not otherwise required.
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required if more than 2,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - d. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
6. Stream restoration projects for water quality improvements:
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. The project meets the principles and protocols for stream restoration projects outlined in DNR Policy 2015:01 (effective June 8, 2015).
 - d. Planting is provided at a 1:1 ratio for clearing of forest and developed woodland.
7. Installation of soft kayak launches:
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.

- c. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
8. Placement of dredged material in the Buffer for the purposes of beach replenishment, and/or shoreline restoration projects that have evidence of applicable State/Federal authorizations.
 9. Emergency slope stabilization projects when roadways, use areas, or other facilities or structures are in imminent danger.
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required if more than 5,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - d. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
 10. Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls, or other related landscape stabilization and restoration techniques.
 - a. No threshold for limit of disturbance or clearing.
 - b. Impacts are permitted in the Buffer.
 - c. Written justification is required if more than 2,000 sf of clearing is proposed and/or impacts are proposed to the Buffer.
 - d. Mitigation is required at a 1:1 ratio for clearing of forest and developed woodland.
 11. Replacement or installation of new revetment shore erosion control measures less than 500 linear feet provided the Department has completed the CAC Revetment Buffer Management Plan form and that have evidence of applicable State/Federal authorizations.
 12. Replacement or installation of new living shorelines less than 500 linear feet provided the Department has developed a Buffer Management Plan and that have evidence of applicable State/Federal authorizations.

EXHIBIT B

Project Review Information Required for Category II Projects

Review of Category II projects will require the Department provide the information noted in Parts A through C below in a narrative and on a site plan. Commission staff may request additional information on certain projects in order to perform a more thorough review when necessary.

A. Basic Project Information

1. Project Description.
2. Total Limit of Disturbance.
3. Total Net Change in Lot Coverage.
4. Total Clearing of Forest and Developed Woodland.
5. Buffer Impacts? (Y/N)
 - a. If Yes, explain why the project must be located in the Buffer.
 - b. Describe how impacts to the Buffer have been minimized.
6. Any other Habitat Protection Area Impacts?
 - a. If Yes, explain how the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) DNR is adhering to all conditions and guidance provided by any MDE authorizations, DNR WHS review, DNR Fisheries review, and USFWS review.
7. When issued, the applicant shall provide a Waterway Construction Permit number.

B. Supplemental Information

1. Coastal Resiliency: If the project will be threatened by a coastal hazard, including sea level rise or extreme weather event, please provide information regarding how the Department has or has not incorporated coastal resilient practices, such as siting, design, construction, maintenance or other measures. The Department may consider the project design life, cost and benefits.
2. Category II – Minor Exceedance and Category II – Special Projects: If the project fits one of these two categories described in the MOU, please provide a written justification as outlined in the MOU.

C. Mitigation

Please provide a description and map showing the location of any required mitigation. Where appropriate include species, size and maintenance of proposed plantings.

D. MERLIN Online and Coastal Atlas GIS Review

To assist in review of the project, please review the following GIS fields on MERLIN Online or Maryland Coastal Atlas and indicate if your project is located within any of the review layers.

MERLIN: mdmerlin.net

Coastal Atlas: dnr.maryland.gov/ccs/coastalatlus/

Living Resources/Habitat Protection Areas

- Sensitive Species Project Review Areas
- Waterfowl Areas
- Natural Heritage Areas
- Forest Interior Dwelling Species

Floodplain Layer

- 100 Year Floodplain
- 500 Year Floodplain

Sea Level Rise Vulnerability

- 0-2 Foot Inundation
- 2-5 Foot Inundation

Shoreline Changes/Erosion

- High Erosion Transects
- Medium Erosion Transects

Sea Level Rise – Wetland Adaptation Areas

- High Priority
- Medium Priority

Storm Surge

- Category I
- Category II
- Category III
- Category IV

DEFINITIONS

Buffer: Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of each bank of a tributary stream, or the landward boundary of a tidal wetland; and exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance. The Buffer is at least 100 feet, even if that area was previously disturbed by human activity. The Buffer may be expanded to include contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern.

Critical Area: All water and land areas within 1,000 feet beyond the landward boundaries of State or private tidal wetlands.

Development: means a human activity that materially affects the condition or use of dry land, land under water, or a structure. Development includes redevelopment.

Disturbance: means any alteration or change to the land. Disturbance includes any amount of clearing, grading, or construction activity.

Habitat Protection Area: means an area that is designated for protection under Natural Resources Article §8-1806, Annotated Code of Maryland or by the Secretary of Natural Resources. Habitat Protection Area includes the Buffer; a nontidal wetland; a habitat of a threatened species, endangered species, or species in need of conservation; colonial water bird nesting sites; historic waterfowl staging and concentration areas; riparian forests; forests used as breeding areas by forest interior dwelling birds; designated Natural Heritage Areas; and anadromous fish propagation waters.

Expanded Buffer: The Buffer is expanded for contiguous sensitive areas in accordance with the following requirements:

- For steep slopes at a rate of 4 feet for every 1 percent of slope, or to the top of the slope, whichever is greater;
- For a nontidal wetland, to the upland boundary of that nontidal wetland;
- For a Nontidal Wetland of Special State Concern, to include the WSSC and its regulated 100-foot buffer;
- To the lesser of 300 feet or the landward edge of a highly erodible soil on a slope of less than 15 percent; or
- To the lesser of 300 feet or the landward edge of a hydric soil.

Permanent Disturbance: means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. Permanent disturbance includes construction or installation of any material that will result in lot coverage, construction of deck, grading, and clearing.

Redevelopment: means the process of developing land which is or has been developed.

Resurfacing: means the process of repairing an existing surface for maintenance purposes such as sealing existing asphalt or adding gravel to existing gravel. For the purposes of this MOU, resurfacing does not include removal of consolidated surfaces and replacement with other consolidated surface, or removal of consolidated surfaces and replacement with permeable materials. Resurfacing does not include expansion of any area.