

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on this 14th day of March, 2019, by and between the MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT or the Department) and the CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (the Commission), (collectively, "the Parties," and either "a Party").

RECITALS

WHEREAS, the Annotated Code of Maryland, Natural Resources Article §§ 8-1801 *et seq.* 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 Regulations 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;

WHEREAS, the Commission has authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands 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;

WHEREAS, MDOT is an executive agency responsible for the planning, funding, and administration of the State's transportation activities pursuant to the Transportation Article, Annotated Code of Maryland;

WHEREAS, MDOT recognizes the authority, goals, objective and policies of the Commission's Criteria under COMAR 27.02.05;

WHEREAS, MDOT and the Commission entered into an MOU in 2003 which provided clarification of the terms and procedures by which MDOT would conduct development activities in the Critical Area as a way to ensure that any such activities were consistent with the Commission's criteria;

WHEREAS, MDOT and the Commission have recognized the need to revise and replace that 2003 MOU with this new 2019 MOU to ensure that the interaction between the Parties related to development activities, procedures, and approvals are up-to-date and efficient; and

WHEREAS, MDOT and the Commission desire to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake and the Atlantic Coastal Bays and their tributaries and to provide mitigation that enhances the quality and surrounding habitat of these waters.

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

1 PURPOSE AND BACKGROUND:

1.1 The purpose of this MOU is to clarify the terms and procedures by which MDOT will conduct development activities in the Critical Area, including those that qualify for General Approval, and to ensure that any such activities are consistent with 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 will also serve to improve the predictability of project mitigation needs and the expected results for mitigation, as well as the process for establishing MDOT mitigation banks.

1.2 MDOT enters into this MOU on behalf of the following Modal Administrations (referred to herein, individually as a "Transportation Business Unit" (TBU), and collectively as the "TBUs" within the Department):

- 1.2.1 State Highway Administration (Exhibit A1)
- 1.2.2 Maryland Aviation Administration (Exhibit A2)
- 1.2.3 Maryland Transit Administration (Exhibit A3)
- 1.2.4 Maryland Port Administration (Exhibit A4)
- 1.2.5 Motor Vehicle Administration (Exhibit A5)

1.3 This MOU addresses the following items:

- 1.3.1 The process to be used by both parties in order for MDOT to gain General Approval of the Commission for projects in the Critical Area that are either maintenance activities or activities that are minor in size and/or scope (MOU Section 2);
- 1.3.2 The responsibilities of both parties with regard to such General Approvals (MOU Sections 3 and 4); and
- 1.3.3 The process to be used by both parties in order for MDOT and its TBUs to gain approval of the Commission for establishing mitigation banks (MOU Section 5).

2 GENERAL APPROVALS: The Commission agrees to grant General Approval to MDOT for certain classes of development by the TBUs, pursuant to COMAR 27.02.05. The conditions for general approval for each TBU are attached hereto, and incorporated herein by reference, as Exhibits A1 through A5. When a project by another entity (such as a local jurisdiction) is proposed on MDOT land, this MOU may apply and the TBU is responsible for notifying Commission staff of the project so that appropriate coordination can occur. The Commission retains all applicable authority to modify or revoke this General Approval.

3 PROCESS: As described in this MOU and its Exhibits, the Commission agrees to provide a process that allows for minor development activities that meet specific thresholds or

requirements to be reviewed by Commission staff. MDOT agrees to initiate early coordination and consultation with Commission staff on development projects to identify ways to minimize impacts and determine mitigation requirements. MDOT and the TBUs will submit projects in accordance with the State Project Checklist, found on the Commission's website.

3.1 Upon issuance, MDOT shall provide the Commission with a copy of the current approved Consolidated Transportation Program (the "CTP").

3.2 As needed, each TBU shall provide to the Commission a list of projects located in the Critical Area that are anticipated to reach final design phase during that fiscal year. Each TBU list shall indicate for each project: (a) the project location; (b) whether the project is on State, local, or private land; (c) whether the project qualifies for General Approval or requires full Commission review; and (d) the project schedule, including advertisement date, date of project submittal, and date by which CAC approval is needed. As new projects are added for review, the list will be updated accordingly and made available to CAC.

3.3 Each TBU shall update its list as projects are added or status changes.

3.4 Said List shall be for information only. Regardless of whether a project is included on a list or not, all projects in the Critical Area will follow the submission and approval processes outlined in this MOU and its Exhibits.

3.5 The TBUs shall consult with the Commission during the planning and design stages of all projects subject to Commission review. The TBUs shall invite Commission staff to inter-agency review sessions and to other meetings involving siting and impacts of projects in the Critical Area. The TBUs shall send the Commission relevant environmental reports and documents that are distributed to other state agencies for review. Commission staff retain their right to contact the TBUs directly to discuss and/or request additional information.

3.6 As part of the coordination between the TBUs and Commission staff during the planning and design stages of all projects subject to Commission approval, MDOT commits to avoiding and minimizing adverse impacts to the Critical Area, including the Buffer and other habitat protection areas, to the maximum extent practicable.

3.7 When all information required by the Commission relevant to a TBU is available, that TBU shall submit to the Commission in accordance with this MOU and its corresponding Exhibit.

3.8 The Commission shall notify the TBU of its decision to approve, deny, or approve with conditions the project according to COMAR 27.02.07.

3.9 The TBU shall notify the Commission of any changes in the plans as approved, or of changes that occur during construction of the project, if these changes could affect fish, wildlife, or plant habitat, habitat protection areas under COMAR 27.02, water quality, and/or run-off to the Chesapeake Bay or the Atlantic Coastal Bays or their tidal tributaries. The TBU

Administrators shall afford Commission staff the opportunity to review any such changes and Commission staff shall make recommendations based on assessment of the extent to which the project conforms with COMAR 27.02.05.

3.10 The Commission shall notify the appropriate TBU and the MDOT 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. The TBU shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until the problem is resolved.

3.11 Staff of the Commission and MDOT may meet on an as-needed basis to address issues such as the project design, project 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, water quality monitoring, or priorities for training. Visits to construction sites may be a part of the process as needed.

4 PROCESS EXCEPTIONS: Certain projects may require a TBU to request an out-of-cycle project review that does not meet the General Approval. If authorized to proceed by the Chairman, the project shall be presented at the next available meeting of the Critical Area Commission for a vote. Process exceptions are limited to emergency action and priority projects as defined below:

4.1 Emergency action projects involve situations and conditions that jeopardize public safety and welfare and require a TBU to take immediate action in the form of development in the Critical Area. A TBU may undertake the necessary remedial actions without prior Commission approval; however, each TBU shall notify the Commission of the development activities as soon as possible and shall obtain Commission recommendation for any necessary actions to ensure compliance with the Critical Area Law. An emergency action includes those repairs that will prevent a threat to life, severe loss or damage to property, or an imminent threat to public safety or public works. Repairs should be limited to the extent warranted by the necessary remedial actions.

4.2 Priority projects may include both minor scale development projects of local significance (COMAR 27.02.02.01) and major development projects as discussed in COMAR 27.02.04.01. Priority projects may be reviewed and receive conditional approval from Commission staff provided they meet the criteria as outlined in COMAR 27.02.06.01. TBU requested priority process exceptions must include a memo, including the reason for the out-of-cycle project review (Governor's Priority, locally significant, budget constraints, etc.) and the anticipated timeline for project submittals and implementation. This memo should be addressed to the Chairman of the Critical Area Commission and come from either the State Secretary of Transportation, the Executive Director (Maryland Aviation Administration or Maryland Port Administration), or the Administrator (Maryland Transit Administration, State Highway Administration or Motor Vehicle Administration) for the TBU requesting the process exception.

5 MITIGATION: The Commission and MDOT will work together to standardize mitigation requirements that recognize the unique development needs of the individual TBUs and recognize the necessity to upgrade or repair existing development, including within the Buffer. The Commission shall collaborate with MDOT to establish guidelines for stormwater mitigation banks that can be used to meet Critical Area 10% pollutant reduction requirements.

5.1 BANKING: MDOT and the Commission will work together to create a model Ecosystem Mitigation banking program to meet mitigation requirements; and commit the resources necessary to explore the identification and execution of this banking program. The parties agree that MDOT and its TBUs may create mitigation banks either by accumulating credits for providing environmental mitigation over and above the amount required by the Commission for a particular project; or through the establishment of ecosystem banking areas. The process, terms, and conditions of such banks will be set forth as Exhibit B, attached hereto and incorporated by reference herein.

5.2 INNOVATIVE MITIGATION OPPORTUNITIES: The parties agree that MDOT and its TBUs may pursue innovative mitigation opportunities, other than direct replanting, that provide multiple water quality and habitat benefits; provided that such opportunities are reviewed and approved by agreement between the parties.

6 CLIMATE RESILIENCY: MDOT acknowledges that, per COMAR 27.02.05.02.A.(2), State Agencies are required to consult with the Commission as soon as practicable in the project planning process to assess climate resilient practices that address coastal hazards, extreme weather events, sea level rise, and other impacts. A description of specific climate resilient practices will be provided by each TBU to the Commission and incorporated into each TBU's corresponding Exhibit.

7 POINTS OF CONTACT: The points of contact for written communication between the Parties are:

MDOT:

Director
The Secretary's Office of Environment
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

For the Commission:

Executive Director
Critical Area Commission
1804 West Street, Suite 100

Annapolis, MD 21401

8 TERM: This MOU shall become effective on the date on which it is signed by both of the Parties and shall remain in full force and effect for a period of 10 years, unless otherwise terminated in accordance with this MOU. The term of this MOU may be extended by written agreement of the Parties.

9 GENERAL PROVISIONS

9.1 MERGER: This Memorandum, and its Exhibits, and the Attachments to the Exhibits 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.

9.2 TERMINATION: A Party may terminate this MOU with written notice given 90 days in advance to the other Party. Any mitigation for projects approved under this MOU prior to termination shall be maintained and monitored according to the requirements of this MOU.

9.3 AGENCIES HELD HARMLESS: Recognizing that MDOT is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, MDOT agrees, to the fullest extent permitted by law, to indemnify and save harmless and defend the Commission and all of its employees, officials, and representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work under this MOU, by MDOT or any subcontractor to MDOT, or the subcontractor's employees, agents, or representatives. This is not to be deemed as a waiver of any immunity which may exist in any action.

9.4 RESOLUTION OF DISAGREEMENTS: Should disagreements arise as to the interpretation of the provisions of this MOU, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreements will be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to a higher official in each agency for appropriate resolution.

9.5 AMENDMENTS TO THE MOU: This MOU may not be amended or modified except with the written consent of both Parties. Amendments or modifications to this MOU also require approval by the full Commission.

9.6 AMENDMENTS TO EXHIBITS A1 THROUGH A5, AND THEIR ATTACHMENTS: The Parties acknowledge and agree that the Exhibits and their Attachments are the result of a joint effort by the Parties. Because these Exhibits and their Attachments may evolve with gained experience during implementation of the MOU, the Parties agree that the Exhibits and their Attachments may be amended periodically with the written consent of the Points of Contact for each Party listed above in Section 7. The Commission Chairman will update the Commission of

any amendments or modifications to the Exhibits or their Attachments at the next meeting following the agreed-upon amendments or modifications.

9.7 REPEALING AND REPLACING IN WHOLE EXHIBITS A1 THROUGH A5 AND THEIR ATTACHMENTS: The Parties intend to work together to individually repeal and replace each Exhibit to the MOU. Fully repealing and replacing the Exhibits, in whole, along with their Attachments is not an Amendment, described above in Section 9.6. Replacing each Exhibit in whole requires written approval of both Parties, and approval by the full Commission. Each Exhibit may be repealed and replaced separately from this MOU and individually or jointly with one or more other Exhibits.

9.8 MARYLAND LAW PREVAILS: The MOU shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

9.9 AUTHORITY: Each Party to this MOU acknowledges and agrees that it has the full right, power, and authority to execute this MOU, and to perform the obligations hereunder.

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

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS


WITNESS

By: 
CHARLES C. DEEGAN, CHAIRMAN

MARYLAND DEPARTMENT OF TRANSPORTATION



WITNESS

By: 
PETE K. RAHN, SECRETARY

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

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


Assistant Attorney General
Critical Area Commission


Assistant Attorney General
Maryland Department of Transportation

AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN
THE MARYLAND DEPARTMENT OF TRANSPORTATION AND
THE CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS

This Amendment to the Memorandum of Understanding (“Amendment”) is made this 4th day of November, 2021, by and between the MARYLAND DEPARTMENT OF TRANSPORTATION (“MDOT” or “the Department”) and the CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (“the Commission”), (collectively, “the Parties,” and either “a Party”).

WHEREAS, MDOT and the Commission entered into a Memorandum of Understanding (the “MOU”) dated March 14, 2019, the purpose of which is to clarify the terms and procedures by which MDOT and its Transportation Business Units (“TBUs”) conduct development activities in the Critical Area, including those that qualify for General Approval, and to ensure that any such activities are consistent with the Commission’s criteria, including criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake and Atlantic Coastal Bays; and

WHEREAS, at its April 7, 2021 meeting, the Commission voted to approve the Maryland Aviation Administration (MAA) Exhibit to the MOU (Exhibit A2) with the condition requested by the Project Subcommittee that the Commission work with MAA to determine how polyfluoroalkyl substances (PFAS) contamination reporting requirements could be incorporated into the MOU or individual Exhibits to the MOU.

NOW, THEREFORE, the Parties agree to amend the MOU as follows:

I. Process

On page 4, the following provisions shall be inserted after Section 3.11:

“3.12 Each TBU, when conducting development activities in the Critical Area, shall ensure that the TBU complies with all applicable federal, State, and local requirements.

3.13 Each TBU, when conducting development activities in the Critical Area, shall notify the Commission if the TBU is or becomes aware of controlled hazardous substances or chemical contamination of soil or water and shall adhere to State water quality standards.”

II. Electronic Signatures

On page 7, the following provision shall be inserted after Section 9.9:

“9.10 ELECTRONIC SIGNATURES: Signatures provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original signatures.”

III. Scope of Amendment

Except as expressly provided in this Amendment, all remaining terms contained in the MOU shall remain in full force and effect. Should any inconsistencies arise between this Amendment and the MOU as to the specific matters which are the subject of this Amendment, the terms and conditions of this Amendment shall control.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS:

Nick Kelly
WITNESS

By: *Charles C. Deegan*
CHARLES C. DEEGAN, CHAIRMAN

Approved as to form and legal sufficiency:

Emily Vainieri
Assistant Attorney General
Critical Area Commission

MARYLAND DEPARTMENT OF TRANSPORTATION:

Sandra E. Herzig
WITNESS

By: *Gregory I. Slater*
GREGORY I. SLATER, SECRETARY

Approved as to form and legal sufficiency:

Christopher L. Fontaine
Assistant Attorney General
Maryland Department of Transportation

EXHIBIT LIST FOR MOU BETWEEN MDOT & COMMISSION

<u>Document Title</u>	<u>Date of Approval</u>	<u>Date of Amendment</u>
Exhibit A1: State Highway Administration (MDOT SHA) Attachment: Technical Guidance Document	2/6/19	
Exhibit A2: Maryland Aviation Administration (MDOT MAA) Attachments ...	4/7/2021	
Exhibit A3: Maryland Transit Administration (MDOT MTA) Attachments: Technical Guidance Document	2/6/19	
Exhibit A4: Maryland Port Administration (MDOT MPA) Attachments	6/2/2021	
Exhibit A5: Motor Vehicle Administration (MDOT MVA) Attachments		

EXHIBIT A1: STATE HIGHWAY ADMINISTRATION

1.0 Conditions for General Approval of Maryland State Highway Administration (MDOT SHA) 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 General Approval by the Commission allows implementation of the approved programs, activities or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05.

For the purposes of this General Approval, permitted activities within the Critical Area are divided into two categories: Category I: Limited Reporting Activities, and Category II: Development Activities That Are Minor in Either Size and/or Scope. In addition to satisfying all requirements of COMAR 27.02.05, projects proposed for General Approval must meet the conditions according to project Category as defined below.

MDOT SHA will identify, and where feasible incorporate, 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(2). MDOT SHA currently reviews projects during planning to determine if they are located in a zone of sea level change and flooding. Planning and engineering work together to avoid or minimize environmental and structural impacts that could occur in these locations. As Coast Smart siting and design guidelines are developed there will be additional measures taken to ensure avoidance and minimization of impacts to the highway network in vulnerable locations.

For projects that involve the removal of existing impervious surfaces, MDOT SHA will use approved landscape practices for stabilization and revegetation of those areas, with a preference for native species where practicable.

2.0 Category I: Limited Reporting Activities

The purpose of Category I is to allow maintenance activities for existing facilities or roads, landscape projects, stormwater management projects, or minor improvements to existing roadways and facilities. Projects that qualify under Category I do not require Critical Area 10% stormwater management; nor do they require a climate resiliency assessment. On March 1st of each year, MDOT SHA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit that require removal of trees.

For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a

Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

Any project that qualifies under Category I is permitted in all Critical Area designations and within the Buffer, provided that no more than 5 trees are removed, there are no impacts to habitat protection areas, and disturbed areas are stabilized. Every tree removed must be replaced with one native tree (minimum size ¾-inch caliper). 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 under Category II, including justification for the removal of trees or an alternative planting location. No tree removal or Buffer disturbance is permitted for new stormwater management facilities. There are no forest clearing limits or mitigation requirements for invasive species management, the maintenance of an existing stormwater management facility, or the removal of trees from existing dam embankments.

BENEFICIAL AND NON-DEVELOPMENT RELATED PROJECTS

- Invasive species removal and management, including Phragmites control, or exotic species management, including emerald ash borer control.
- Meadow restoration
- Landscape plantings and tree plantings
- Wetland and stream monitoring
- Removal of debris (no temporary or permanent impacts to the Buffer)
- Soil borings
- Installation of monitoring wells

ROUTINE ROADWAY MAINTENANCE AND INSTALLATION OF MINOR TRAFFIC DEVICES

- Repair, modification, installation, and/ or replacement of:
 - Fencing
 - Signs
 - Traffic signals and monitoring equipment
 - Signal preemption equipment
 - Guardrails and safety barriers
 - Railroad warning devices
 - Improved crossing surfaces at grade for railroads
 - Overhead signs and lighting
 - Permanent variable message signs
 - Installation of anodes and wire tests
 - Pavement markings
 - Snow and ice detectors
 - Vehicle loop detectors
 - Pavement grooving and rumble strips
 - Roadway Lighting
 - Closed Circuit Television (CCTV)

- Replacement, patching, resurfacing, and/or milling of roadways (including potholes and malfunctioning joints)
- Replacement, patching, resurfacing, and/or milling of intersections, bicycle facilities, and/or parking lots, where there is no net increase in imperviousness and impervious areas that are removed are stabilized
- Replacement or repair of existing hardscaping
- Unimproved stone/asphalt shoulder - conversion to paved shoulder over Graded Aggregate Base
- Widening of shoulder for temporary traffic shifting for projects not associated with Category II projects or for projects that require full Critical Area Commission Review. Temporary projects may only last up to two years and area must be restored to its original condition.
- Archaeological testing, all Phase 1 and 2 Assessments and any Phase 3 Assessment not associated with a larger project.

FACILITY MAINTENANCE PROJECTS FOR EXISTING FACILITIES ONLY

- Interior modification or interior renovation of buildings/structures
- Exterior renovations and building maintenance where no ground disturbance will occur
- Replacement of hydraulic lifts (which may include removal of contaminated soil)
- Replacement of septic systems outside the Buffer or replacement of septic systems inside the buffer using best available technology

STORMWATER MANAGEMENT PROJECTS

- Pavement removal with stabilization, including areas within the Critical Area Buffer
- Construction of new stormwater management (SWM) facilities within MDOT SHA right-of-way, where no tree removal or permanent disturbance within the Critical Area Buffer will occur
- Stabilization of existing stormwater outfalls limited to installation of rip rap at pipe outfalls where any incidental impact for access is temporary and the disturbed area is revegetated
- SWM facility maintenance or retrofit within the footprint of the existing facility, including any existing maintenance easement for access to the facility, for up to 20,000 square feet of cutting, clearing, or grubbing of existing woody vegetation. There are no mitigation requirements for the maintenance or retrofit of an existing stormwater management facility.
- The removal of woody vegetation from existing dam embankments. There are no clearing limits or mitigation requirements.

ROUTINE DRAINAGE, SMALL STRUCTURES, AND BRIDGE MAINTENANCE

Drainage Improvements

- Repair and replacement of
 - pneumatically applied mortar
 - rip rap
 - grout bags

- lining mortar
- existing slope protection
- drainage Improvement within existing roadway where impervious surface is not increased and stormwater management is not required
- ditch to originally authorized condition (sediment and associated vegetation removal)
- Removal of debris from streams, consistent with MDE Waterway Construction Permit

Culverts and Conveyances (box culverts, pipes, etc.)

- Repair, replacement, extension, or removal of:
 - headwalls and end sections
 - parapets and railings
 - wingwalls
 - spalling
 - joints
 - erosion and sediment control
 - culvert
 - sediment
- Installation of:
 - grout bags
 - rip rap

Bridges

- Cleaning/repainting
- Replace/repair
 - beams
 - conduits and conduit hangers
 - chain link fencing
 - bearings
 - scuppers
 - parapet walls/guard rail
 - headwalls and wingwalls
 - abutments
 - auxiliary piles (hydraulically)
 - expansion joints
- Underpinning
- Pile stubbing/splicing/jackets
- Scour stabilization at piers and abutments
- Patching and deck work, including replacement

UTILITY MAINTENANCE (electric, sewer, water, telephone, marine fuel and fiber optic lines)

- Replacement of utilities
- Access crossings
- Utility crossings

- Erosion protection
- Repair of existing appurtenances (valves, hydrants, manholes)

SLOPE STABILIZATION AND DAM EMBANKMENTS (INCLUDING STORMWATER FACILITIES)

- Removal of trees from dam embankments (no limit to number of trees removed)
- Dam maintenance, stabilization and repair
- New slope stabilization and repair of existing stabilization

ACCESS ROADS

- New access roads outside of the Buffer constructed using pervious construction methods, such as cellular confinement systems, and limited in width to no more than 15 ft.

SIDEWALKS AND ADA RAMPS

- Reconstruction of existing sidewalks and new or existing ADA ramps with less than or equal to 250 sq ft of new imperviousness (10% not required)

3.0 Category II: Development Activities That Are Minor in Either Size and/or Scope

Category II projects include new and replacement/repair development activities that may include changes to the layout or design of an existing facility. In some cases, a change of facility type (e.g. – parking lot to building) may be allowed if all parameters are met. All threshold limits described below relate to impacts within the Critical Area only.

Note: 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. If the proposed development project results in a combination of habitat impacts or includes multiple elements of projects listed in this MOU, the Critical Area Commission reserves the right to decide at any time to bring a project that may appear to qualify under the MOU to the full Critical Area Commission for review and approval.

3.1. Qualifying Parameters:

3.1.1. No impacts to Habitat Protection Areas other than the 100-foot Buffer, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) MDOT SHA adheres to all conditions and guidance provided by any MDE authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable).

3.1.2. No new buildings or other facilities that do not qualify as a water-dependent facility (other than roads, bridges, and utilities) are permitted to be located in the Buffer under this MOU unless otherwise authorized. Replacement of existing facilities and structures in the Buffer that

meet all other parameters can be reviewed under Category II. Any new lot coverage in the Buffer cannot be located further waterward than existing lot coverage in the Buffer.

3.1.3. For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

3.1.4. MDOT SHA will identify, and where feasible incorporate, 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).

3.1.5. Forest and developed woodland clearing may not exceed 20,000 square feet for linear projects. Forest and developed woodland clearing may not exceed 5,000 square feet for non-linear projects.

3.1.6. Limits of disturbance (LOD) =

- Linear LOD – No square footage limit. Expansion of lot coverage must be limited to a 5-foot width on either side of the roadway.
- Non-linear LOD (for parking lots, buildings, etc.) – 5,000 square feet of disturbance permitted. New buildings and structures cannot exceed 1,200 square feet and new buildings can only be one-story in size. The expansion or replacement of existing buildings or structures cannot have a net increase in lot coverage that exceeds 1,200 square feet.

3.1.7. Shore Erosion Control linear footage limit - 200 linear feet.

3.1.8. For non-linear projects, new lot coverage may not encroach into the Buffer closer than existing lot coverage, unless MDOT SHA provides adequate justification that encroachment is necessary.

3.1.9. Projects may be permitted to exceed Parameters 3.1.5 - 3.1.8 listed above, but MDOT SHA must submit information justifying its inclusion under the MOU. Critical Area staff will evaluate the submittal to determine if an exception to the limits can be granted. MDOT SHA must provide written justification that explains why a development project fits under this MOU despite exceeding disturbance, size, or Buffer encroachment thresholds by minor amounts. Justification factors may include, but are not limited to:

- The nature/intensity of the project is not changing (e.g. – widening a road doesn't change the nature of the road; adding new trail to an existing trail doesn't change the nature/intensity or use of the trail; asphalt will remain asphalt, grass will remain grass, etc.);
- After completion of the work, the site will be restored to original conditions;
- All work will be completed within MDOT SHA right-of-way;

- The activities are maintenance in nature;
- All other parameters of Category II are met; or
- Any building that exceeds the size parameter is for storage or maintenance purposes only
- The purpose of the project is to address safety concerns

The written justification must specifically address why the proposed project cannot meet Category II thresholds. A written ledger of the justification projects shall be submitted to the Commission each year by March 1st.

3.1.10. Non-Buffer forest/developed woodland mitigation = 1:1 mitigation.

3.1.11. Buffer Mitigation

- 2:1 for a new water-dependent facility.
- 1:1 for redevelopment of an existing facility or for shore erosion control.
- Linear Project Buffer Mitigation
 - New linear project: 2:1
 - Redevelopment:
 - Ground disturbance within existing right-of-way or access path: 1:1
 - Ground disturbance outside of existing right-of-way or access path: 2:1
- An additional 1:1 mitigation is required for any area of canopy coverage removed.

3.1.12. 10% pollutant removal on site or off site, if applicable (e.g. – 10% not required for grass to grass) and in accordance with MDE’s Technical Memorandum #4.

3.2. Eligible Projects:

The following is a list of projects that may meet the Qualifying Parameters under Category II. This list is not inclusive of every project and there may be projects not listed below that meet the Qualifying Parameters and can be proposed by MDOT SHA and reviewed by CAC under Category II.

CATEGORY I PROJECTS (Determined on a Case-by-Case basis regarding 10%)

- Category I projects that fail to meet Category I threshold limits.

STRUCTURAL AND FACILITY PROJECTS (10% required)

- Buildings/structures - new, expansion of existing, replacement, relocation, in-kind, etc.
- Repairs to or replacement of truck weigh stations, salt domes, rest areas, or MDOT SHA installations.

SHORE EROSION CONTROL (10% not required)

- New/Replacement shore erosion control measures (revetment, bulkheads, living shorelines).

DRAINAGE IMPROVEMENTS (10% not required)

- Installation of new or modification of existing storm drain outfalls
- Installation of new or modification of existing inlets and storm drains

ROADWAY, PARKING AND SIDEWALK PROJECTS (10% required)

- Installation of new bicycle lanes (except for multi-use paths - see Special Projects) or sidewalks
- Reconstruction, patching, and/or resurfacing of roadways, intersections, bicycle facilities, parking lots, and/or sidewalks where an increase in imperviousness is proposed.
- Unimproved stone/asphalt shoulder - conversion to paved shoulder where ground disturbance is proposed.
- Widening of shoulder (permanent).
- Replacement of impervious surfaces with permeable surfaces.
- Upgrades to existing facilities in order to meet requirements for Americans with Disabilities Act.
- Reconstruction of existing sidewalks and new or existing ADA ramps with more than 250 sq ft of new imperviousness.

UTILITIES (electric, sewer, water, telephone, marine fuel and fiber optic lines) (10% not required)

- Installation of new utility lines
- Replacement of utilities
- Replacement of access crossings
- Replacement of utility crossings
- Directional boring associated with utility repair/replacement
- Repair of existing appurtenances (valves, hydrants, manholes)

BRIDGES AND SMALL STRUCTURES (see below for 10% requirement)

- Redecking (no 10% required)
- Bank stabilization (no 10% required)
- Pier/pile (in-kind) (no 10% required)
- Bridge and small structure replacement within the same alignment (10% required)

STORMWATER MANAGEMENT (10% not required)

- Stormwater management facility maintenance and retrofit with over 20,000 sq ft of cutting, clearing, or grubbing of woody vegetation within the existing footprint of the facility, including any maintenance easement for access to the facility.
 - No clearing limit for woody vegetation, including in the Buffer
 - Written justification is required for impacts in the Buffer outside of the existing footprint of the facility, or for cutting, clearing, or grubbing of woody vegetation outside of the existing footprint of the facility, including any impacts to the Buffer or cutting, clearing, or grubbing of woody vegetation related to a new access road. Impacts outside the existing footprint of the facility, to the Buffer or to woody vegetation outside the Buffer, shall be mitigated at 1:1.

- Green infrastructure practices that are installed to treat previously untreated impervious surfaces and not otherwise required for a project that meet the following thresholds and requirements:
 - 20,000 sq ft of tree clearing with no more than 5,000 sq ft of clearing in the Buffer
 - Written justification is required if more than 20,000 sq ft is proposed to be cleared
 - Mitigation is provided at 1:1 for all forest or developed woodland clearing, including Buffer clearing

SPECIAL PROJECTS

Due to the nature of the projects listed below, the threshold limits and mitigation requirements may be varied from that described above. Unless otherwise specified, the Qualifying Parameters in 3.1 above still apply. MDOT SHA 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.

Nonstructural/Restoration Projects (10% not required)

- No threshold for limit of disturbance or clearing
- Impacts are permitted in the Buffer
- Coordination with DNR, MDE, MHT, USFWS, EPA, NMFS, and USACE occurs
- Planting is provided at a 1:1 ratio for clearing of forest and developed woodland
- Qualifying activities include:
 - Clearing/Removal of more than five (5) hazardous trees
 - Streambank stabilization
 - Revetment above mean high water
 - Weir or dam construction/removal
 - Wetland creation and waterfowl impoundment construction, provided that no Habitat Protection Areas are impacted, other than the Buffer
 - Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls or other related landscape stabilization and restoration techniques
 - Stream Restoration

Multi-Use Paths (10% is required)

- No threshold for limit of disturbance
- Permanent impacts are permitted in the Buffer of less than 5,000 square feet
- Consistent with DNR Wildlife and Heritage Service requirements and recommendations for Habitat Protection Areas other than the Buffer
- Clearing impacts to forest or developed woodland of no more than 20,000 square feet
- Wetland impacts are permitted, provided all MDE requirements have been met

Solar or Photovoltaic Solar (PVS) System Installation (10% is not required if project meets MDE specifications)

- New installation, replacement, repair, or removal of solar or PVS systems, including interconnection to the power grid
- Directional boring associated with solar or PVS system installation

- Up to 5,000 square feet of new solar panels may be located in the Buffer but may not be located further waterward into the Buffer than existing development
- No more than five (5) trees may be cleared, either inside or outside the Buffer

EXHIBIT A1: ATTACHMENT 1 TECHNICAL AND PROCESS GUIDANCE DOCUMENT

Definitions

Buffer Management Plan - A narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:

- (1) Affect a portion of the Buffer
- (2) Alter Buffer vegetation; or
- (3) Require establishment of a portion of the Buffer in vegetation.

Ground Disturbance - Any alteration or change to the land, including any amount of clearing, grading, or construction activity. Ground disturbance does not include gardening or maintenance of existing grass lawn.

Hardscape/Hardscaping – As defined in Chapter 9.9-H of SHA’s “Landscape Design Guide.” Includes but is not limited to unit pavers (concrete, asphalt, or clay), stamped concrete, finished concrete, or asphalt. Hardscaping materials are considered lot coverage and are included in impervious coverage for stormwater management purposes.

Water Dependent Facilities - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09.

Category II w/Justification

Upon reviewing the submitted information, Commission staff will determine whether the project qualifies under the Category II standards, whether the project qualifies under Category II standards with a written justification (including review by the Executive Director of the Commission) as required in Section 3.1.9 of Exhibit A1, or whether the project will be required to be presented to the full Critical Area Commission for review and approval.

By March 1st of each year, MDOT SHA shall provide the Chair of the Commission with a report containing those projects that qualify under the MOU using the justification option outlined in Section 3.1.9. The report shall list the following information:

- Location of the project
- Site plan
- A summary of proposed impacts/exceedance
- Date of project approval letter from CAC

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 the justification option.

Project Changes

Notification of project changes for Category I projects is not required if the project will still qualify under Category I of this MOU. MDOT SHA shall notify the Commission of the following project changes:

- Category I projects that become Category II projects
- All Category II projects
- Non-compliance issues within the Critical Area

Buffer and Wetland Delineations

When tidal wetlands are created for mitigation purposes, the Critical Area Buffer shall be redrawn from the edge of newly created wetlands. When nontidal wetlands are created adjacent to the Critical Area Buffer line, the Critical Area Buffer shall be expanded to include the newly created nontidal wetlands. When MDOT SHA submits wetland mitigation plans for review by the Commission that affect the Critical Area Buffer line, plans shall include both the existing and proposed Critical Area Buffer line. CAC staff should make every effort to attend site visits for projects requiring full Commission approval and any questionable Category II projects. If CAC staff is unable to attend a site visit, MDOT SHA shall provide the findings of the site visit to CAC staff as soon as information is available. If CAC staff believes the Buffer delineation should be modified based on those findings, CAC staff shall notify MDOT SHA of such disagreement within four weeks of the site visit.

Mitigation

When a temporary solution for a public safety project requires mitigation and will be permanently resolved within two years of the date of Commission notification, mitigation for the temporary solution may be counted toward any required mitigation for the permanent solution. MDOT SHA shall provide such information at the time of notification of the permanent solution project. Extension of the two-year period may be granted on a case-by-case basis. Planting of required mitigation for the temporary solution may be delayed until construction of the permanent solution is complete.

MDOT SHA will notify Commission staff when they review an access permit for a private development project on MDOT SHA land. The developer is responsible for obtaining all approvals and meeting any mitigation requirement. The project may be reviewed under the MDOT SHA Exhibit if Commission staff agrees.

Point of Contacts

MDOT SHA will establish a primary point of contact, for all projects, to whom Commission staff shall direct all questions. For design build projects, the primary point of contact will be established after the project is awarded to a contractor. If a contractor is seeking Commission approval for a contract, MDOT SHA will establish a Project Manager to whom Commission staff shall direct all questions. Full delivery projects may not be on MDOT SHA land, so would be reviewed by Commission staff based on who owns the land, through the local jurisdiction.

EXHIBIT A2: MARYLAND AVIATION ADMINISTRATION

All projects proposed on land owned by MDOT MAA which are located within the Critical Area, including projects proposed by MDOT MAA tenants, must be reviewed for compliance with COMAR Title 27.02: Development in the Critical Area Resulting From State and Local Agency Programs as outlined in this Exhibit

1.0 Conditions for General Approval of Maryland Aviation Administration (MDOT MAA) Projects

Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the Critical Area Commission (“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 General Approval by the Commission allows implementation of the approved programs, activities or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05.

For the purposes of this General Approval, permitted activities within the Critical Area are divided into two categories: Category I: Limited Reporting Activities, and Category II: Development Activities That Are Minor in Either Size and/or Scope. In addition to satisfying all requirements of COMAR 27.02.05, projects proposed for General Approval must meet the conditions according to project Category as defined below.

MDOT MAA will identify and, where feasible, incorporate 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(2). The Office of Planning coordinates climate change vulnerability assessments for projects on MAA property, including projects from tenants. MDOT MAA currently reviews projects during planning to determine if they are located in a zone of sea level change and flooding. Planning and engineering work together to avoid or minimize environmental and structural impacts that could occur in these locations. MDOT MAA reviews all applicable capital projects in accordance with the Coast Smart Construction Program guidance, as amended, to ensure avoidance and minimization of impacts to projects in vulnerable locations.

For projects that involve the removal of existing impervious surfaces, MDOT MAA will use MAA-approved practices and design guidelines for stabilization and revegetation of those areas, with a preference for native species where practicable.

2.0 Category I: Limited Reporting Activities

The purpose of Category I is to allow maintenance activities for existing facilities or roads, landscape projects, stormwater management projects, or minor improvements to existing roadways and facilities. Projects that qualify under Category I do not require compliance with

the Critical Area 10% pollutant reduction requirement (10% Rule)¹ nor do they require a climate resiliency assessment. On March 1st of each year, MDOT MAA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit only if the projects require tree removal.

2.1 Qualifying Parameters

2.1.1. Nontidal and Tidal Wetlands

For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

2.1.2. Tree Removal Limits

Except as otherwise noted, any project that qualifies under Category I is permitted in all Critical Area designations and within the Buffer, provided that no more than 5 trees are removed, there are no impacts to habitat protection areas other than the Buffer, and disturbed areas are stabilized. Every tree removed must be replaced with one native tree (minimum size ¾-inch caliper). 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 under Category II, including justification for the removal of trees or an alternative planting location. There are no clearing limits or mitigation requirements for invasive species management, except as noted below.

2.2 Eligible Projects

The following Category I activities covered under this agreement do not require prior coordination with Commission staff; however, annual reporting of these activities is required in accordance with the reporting requirements listed above.

BENEFICIAL AND NON-DEVELOPMENT RELATED PROJECTS

- Invasive species removal and management, including Phragmites control. Unless otherwise authorized, removal of invasive trees must be mitigated at a 1:1 ratio. An official list of plants considered to be invasive in Maryland can be found at <http://mdinvasives.org/species-of-concern/terrestrial-plants/>
- Meadow restoration
- Landscape plantings and tree plantings
- Wetland and stream monitoring

¹ Additional information regarding the 10% Rule can be found in the *Environmental Site Design Criteria for the Maryland Critical Area Manual* available [HERE](#).

- Removal of debris (no temporary or permanent impacts to the Buffer)
- Soil borings, soil sampling, test pits, and exploratory trenching
- Archaeological testing, all Phase 1 and 2 Assessments
- Archaeological testing, any Phase 3 Assessment associated with a qualifying Category I or Category II project
- Installation of monitoring wells and other scientific measuring/monitoring devices
- Installation of informational signage

ROUTINE RUNWAY, TAXIWAY/TAXILANE, AND ROADWAY MAINTENANCE AND INSTALLATION OF MINOR AIRFIELD TRAFFIC AND SAFETY DEVICES

- Repair, modification, installation, and/ or replacement of:
 - Fencing
 - Signs
 - Traffic signals and monitoring equipment
 - Signal preemption equipment
 - Guardrails and safety barriers
 - Overhead signs and lighting
 - Permanent variable message signs
 - Installation of anodes and wire tests
 - Pavement markings
 - Pavement grooving and rumble strips
 - Roadway/Airfield Lighting
 - Closed Circuit Television (CCTV)
 - Navigational aid (NAVAID) markers and devices
- Replacement, patching, resurfacing, and/or milling of runways, taxiways/taxilanes, and roadways
- Replacement, patching, resurfacing, and/or milling of intersections, and/or parking lots, where there is no net increase in imperviousness and impervious areas that are removed are stabilized
- Replacement or repair of existing hardscaping
- Unimproved stone/asphalt shoulder and gravel roads - conversion to paved shoulder over Graded Aggregate Base and maintenance of existing gravel roads
- Widening of shoulder for temporary traffic shifting for projects not associated with Category II projects or for projects that require full Commission review. Temporary projects may only last up to two years and the area must be restored to its original condition.

FACILITY MAINTENANCE PROJECTS FOR EXISTING FACILITIES ONLY

- Interior modification or interior renovation of buildings/structures
- Exterior renovations and building maintenance where no ground disturbance will occur
- Replacement of hydraulic lifts (which may include removal of contaminated soil)

STORMWATER MANAGEMENT PROJECTS

- Pavement removal with stabilization

- Construction of new stormwater management (SWM) facilities on MAA-owned land, where no tree removal or permanent disturbance within the Critical Area Buffer will occur
- Stabilization of existing stormwater outfalls limited to installation of rip rap at pipe outfalls where any incidental impact for access is temporary and the disturbed area is revegetated
- SWM facility maintenance or retrofit within the footprint of the existing facility, including any existing maintenance easement for access to the facility, for up to 20,000 square feet of cutting, clearing, or grubbing of existing woody vegetation. There are no mitigation requirements for the maintenance or retrofit of an existing SWM facility.
- The removal of woody vegetation from existing dam embankments as required by MDE's Dam Safety Division. There are no clearing limits or mitigation requirements.

ROUTINE DRAINAGE AND SMALL STRUCTURES

Drainage Improvements

- Repair and replacement of
 - pneumatically applied mortar
 - rip rap
 - grout bags
 - lining mortar
 - existing slope protection
 - drainage improvement within existing runways, taxiways/taxilanes and roadways where impervious surface is not increased and stormwater management is not required
 - ditch to originally authorized condition (sediment and associated vegetation removal)
- Removal of debris from streams, consistent with MDE Waterway Construction law and regulations

Culverts and Conveyances (box culverts, pipes, etc.)

- Repair, replacement, extension, or removal of culverts and outfalls including
 - headwalls and end sections
 - railings
 - wingwalls
 - spalling
 - joints
 - erosion and sediment control
 - sediment
- Installation of grout bags or rip rap

Piers, Jetties, Docks, and Groins

- Underpinning
- Pile stubbing/splicing/jackets
- Scour stabilization at piers and abutments
- Patching and deck work, including replacement

- Addition of floating finger

UTILITY MAINTENANCE (electric, sewer, water, communication, fuel lines)

- Repair, replacement, or relocation of existing utilities. Relocated utility lines shall not serve new development or redevelopment.
- Repair, replacement, or relocation of existing utility appurtenances (vaults, manholes, valves, hydrants)

SLOPE STABILIZATION AND DAM EMBANKMENTS (INCLUDING STORMWATER FACILITIES)

- The removal of woody vegetation from existing dam embankments as required by MDE's Dam Safety Division. There are no clearing limits or mitigation requirements.
- Dam maintenance, stabilization and repair
- New slope stabilization and repair of existing stabilization

ACCESS ROADS

- New access roads outside of the Buffer constructed using pervious construction methods, such as cellular confinement systems, and limited in width to 22 feet which is the minimum width necessary to accommodate emergency vehicles/equipment as required by Federal Aviation Administration (FAA) safety standards

SIDEWALKS AND ADA RAMPS

- Reconstruction of existing sidewalks and new or existing ADA ramps with less than or equal to 250 square feet of new imperviousness (10% Rule not required)

MAINTENANCE OF PREVIOUSLY CLEARED AREAS AS REQUIRED BY FEDERAL REGULATIONS TO ENSURE THE SAFETY OF THE TRAVELING PUBLIC

- Maintenance of previously cleared areas as required by the FAA, Department of Homeland Security (DHS), or other federal agency regulations which include, but are not limited to, the following:
 - Federal Aviation Regulation (FAR) Part 77 [49 Code of Federal Regulations (CFR) Part 77], which addresses regulated surfaces such as approach and departure airspace
 - FAA Order 8260.3D United States Standard for Terminal Instrument Procedures (TERPS) which also addresses regulated airspace protection surfaces
 - FAA Advisory Circular 150/5300-13 that provides airfield design standards including Safety Areas, Object Free Areas, Protection Zones and grade limitations
 - FAR Part 139 [14 CFR Part 139] and Transportation Security Administration (TSA) Guidelines for General Aviation Airport Operators and Users, which address airport security
 - FAA Advisory Circular No. 150/5200-33, "Hazardous Wildlife Attractants on or Near Airports," which provides wildlife management strategies for airport operators during development

3.0 Category II: Development Activities That Are Minor in Size and/or Scope

Category II projects are comprised of new and replacement/repair development activities that may include changes to the layout or design of an existing facility. A change of facility type (e.g., parking lot to building) may be allowed if all qualifying parameters are met. All threshold limits described below relate to impacts within the Critical Area only.

Note: Early coordination with Commission staff on Category II projects is required to determine if the proposed project is eligible under this Memorandum of Understanding (MOU) between the Commission and MDOT, or if the project will require full Commission review and approval. If the proposed development project results in a combination of habitat impacts or includes multiple types of projects listed in this MOU, Commission staff reserves the right to decide at any time to bring a project to the full Commission for review and approval.

3.1. Qualifying Parameters:

3.1.1. 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) MDOT MAA adheres to all conditions and guidance provided by any MDE authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable).

3.1.2. New buildings are not permitted in the Buffer, unless it qualifies as a water-dependent facility. A new road, bridge, or utility can be located in the Buffer if there is no other alternative. Replacement of existing facilities and structures in the Buffer which meet all other parameters can be reviewed under Category II. New lot coverage may not encroach into the Buffer closer than existing lot coverage, unless MDOT MAA provides adequate justification that encroachment is necessary.

3.1.3. For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

3.1.4. MDOT MAA will identify and, where feasible, incorporate 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(2).

3.1.5. Forest and developed woodland clearing may not exceed 20,000 square feet for linear projects. Forest and developed woodland clearing may not exceed 5,000 square feet for non-linear projects.

3.1.6. Limits of disturbance (LOD)

- Linear LOD – No square footage limit. Expansion of lot coverage must be limited to a 5-foot width on either side of the runway, taxiway/taxilane, and roadway unless a larger expansion is otherwise allowed under this Exhibit.
- Non-linear LOD (for parking lots, buildings, runway, taxiway/taxilane, fillets) – 5,000 square feet of disturbance permitted. New buildings and structures cannot exceed 1,200 square feet and new buildings can only be one-story in size. The expansion or replacement of existing buildings or structures cannot have a net increase in lot coverage that exceeds 1,200 square feet.

3.1.7. For non-linear projects, new lot coverage may not encroach into the Buffer closer than existing lot coverage, unless MDOT MAA provides adequate justification that encroachment is necessary.

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

3.1.9. Projects may be permitted to exceed Parameters 3.1.5 - 3.1.8 listed above, but MDOT MAA must submit information justifying its inclusion under this Exhibit. Critical Area staff will evaluate the submittal and notify MDOT MAA whether or not they concur with granting an exception. Any project that does not meet this exception, must be presented to the full Critical Area Commission for review and approval. MDOT MAA must provide written justification that explains why a development project fits under this Exhibit despite exceeding disturbance, size, or Buffer encroachment thresholds by minor amounts. The written justification must specifically address why the proposed project cannot meet Category II thresholds. Justification factors may include, but are not limited to:

- The nature/intensity of the project is not changing (e.g. – widening a road does not change the nature of the road; adding new trail to an existing trail does not change the nature/intensity or use of the trail; asphalt will remain asphalt, grass will remain grass, etc.)
- After completion of the work, the site will be restored to original conditions
- All work will be completed within MDOT MAA property
- The activities are maintenance in nature
- All other parameters of Category II are met
- Any building that exceeds the size parameter is for storage or maintenance purposes only
- The purpose of the project is to ensure the safety of the traveling public including clearing required by federal regulations and standards

A written report of the justification projects shall be submitted to the Commission each year by March 1st. (See Exhibit A2: Attachment 1)

3.1.10. The mitigation ratio for non-Buffer forest/developed woodland mitigation is 1.5:1 if the safety-related clearing is required by federal regulations. The mitigation ratio for all other projects impacting non-Buffer forest/developed woodlands is 1:1.

3.1.11. Buffer Mitigation Ratios

- 2:1 for a new water-dependent facility
- 1.5:1 for safety-related clearing as required by federal regulations
- 1:1 for redevelopment of an existing facility or for shore erosion control
- Linear Project Buffer Mitigation
 - New linear project: 2:1
 - Redevelopment:
 - Ground disturbance within existing right-of-way or access path: 1:1
 - Ground disturbance outside of existing right-of-way or access path: 2:1
- An additional 1:1 mitigation is required for any area of canopy coverage removed
- Mitigation plantings must be species that are native to the Maryland Coastal Plain and approved by the Critical Area Commission Science Advisor and MDOT MAA

3.1.12. 10% Rule on-site or off-site, if applicable (e.g., 10% not required for grass to grass) and in accordance with MDE's Technical Memorandum #4 and COMAR 27.01.02.03.D(3).

3.2. Eligible Projects:

The following is a list of projects that may meet the Qualifying Parameters under Category II. This list is not inclusive of every project and there may be projects not listed below that meet the Qualifying Parameters and can be proposed by MDOT MAA and reviewed by Commission staff under Category II.

CATEGORY I PROJECTS (Case-by-case determination whether the 10% Rule is required)

- Category I projects that fail to meet Category I threshold limits

STRUCTURAL AND FACILITY PROJECTS (10% Rule required)

- Buildings/structures - new, expansion of existing, replacement, relocation, in-kind, etc.
- Repairs to or replacement of MDOT MAA installations such as fuel storage facilities, navigational aids, and airfield pavement.

SHORE EROSION CONTROL (10% Rule not required)

- New/Replacement shore erosion control measures (revetment, bulkheads, living shorelines) up to 500 linear feet in length

DRAINAGE IMPROVEMENTS (10% Rule not required)

- Installation of new or modification of existing storm drain outfalls
- Installation of new or modification of existing inlets and storm drains

RUNWAY, TAXIWAY/TAXILANES, ROADWAY, PARKING AND SIDEWALK PROJECTS (10% Rule required)

- Reconstruction, patching, and/or resurfacing of runways, taxiways/taxilanes, roadways, intersections, parking lots, and/or sidewalks where an increase in imperviousness is proposed
- Unimproved stone/asphalt shoulder and gravel roads - conversion to paved shoulder over Graded Aggregate Base where ground disturbance is proposed
- Widening of shoulder (permanent)
- Replacement of impervious surfaces with permeable surfaces
- Upgrades to existing facilities in order to meet requirements for Americans with Disabilities Act (ADA)
- Reconstruction of existing sidewalks and new or existing ADA ramps with more than 250 square feet of new imperviousness

UTILITIES (electric, sewer, water, communication, fuel) (10% Rule not required)

- Installation of new utility lines and appurtenances (vaults, manholes, valves, hydrants)
- Directional boring associated with new utility lines

STORMWATER MANAGEMENT (10% Rule not required)

- Stormwater management facility maintenance and retrofit with over 20,000 square feet of cutting, clearing, or grubbing of woody vegetation within the existing footprint of the facility, including any maintenance easement for access to the facility
 - No clearing limit for woody vegetation, including in the Buffer
 - Written justification is required for impacts in the Buffer outside of the existing footprint of the facility, or for cutting, clearing, or grubbing of woody vegetation outside of the existing footprint of the facility, including any impacts to the Buffer or cutting, clearing, or grubbing of woody vegetation related to a new access road. Impacts outside the existing footprint of the facility, to the Buffer or to woody vegetation outside the Buffer, shall be mitigated at 1:1.
- Green infrastructure practices that are installed to treat previously untreated impervious surfaces and not otherwise required for a project that meet the following thresholds and requirements:
 - 20,000 square feet of tree clearing with no more than 5,000 square feet of clearing in the Buffer
 - Written justification is required if more than 20,000 square feet is proposed to be cleared
 - Mitigation is provided at 1:1 for all forest or developed woodland clearing, including Buffer clearing

NEW VEGETATIVE CLEARING REQUIRED BY FEDERAL REGULATIONS TO ENSURE THE SAFETY OF THE TRAVELING PUBLIC (10% Rule not required)

- New areas of vegetative clearing required by FAA or DHS regulations which include, but are not limited to, the following:

- Federal Aviation Regulation (FAR) Part 77 [49 Code of Federal Regulations (CFR) Part 77], which addresses regulated surfaces such as approach and departure airspace
- FAA Order 8260.3D United States Standard for Terminal Instrument Procedures (TERPS) which also addresses regulated airspace protection surfaces
- FAA Advisory Circular 150/5300-13 that provides airfield design standards including Safety Areas, Object Free Areas, Protection Zones and grade limitations
- FAR Part 139 [14 (CFR), Part 139] and Transportation Security Administration (TSA) Guidelines for General Aviation Airport Operators and Users which address airport security
- FAA Advisory Circular No. 150/5200-33, “Hazardous Wildlife Attractants on or Near Airports,” which provides wildlife management strategies for airport operators during development

SPECIAL PROJECTS

Due to the nature of the projects listed below, the threshold limits and mitigation requirements may differ from those described above in Section 3.1 Qualifying Parameters. However, unless otherwise specified here under Special Projects, the Qualifying Parameters in 3.1 above still apply. MDOT MAA may propose additional project types to be added to the eligible special project list below. Upon concurrence by Commission staff of additional Special Projects, the Chairman will update the Commission at the next Commission meeting of any additions to this Special Project list.

Nonstructural/Restoration Projects (10% Rule not required)

- No threshold for limit of disturbance or clearing
- Impacts are permitted in the Buffer
- Coordination with and applicable approvals from DNR, MDE, MHT, USFWS, EPA, NMFS, and USACE occurs
- Planting is provided at a 1:1 ratio for clearing of forest and developed woodland
- Qualifying activities include:
 - Clearing/Removal of more than five (5) hazardous trees
 - Streambank stabilization
 - Revetment above mean high water
 - Weir or dam construction/removal
 - Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls or other related landscape stabilization and restoration techniques
 - Stream Restoration

Multi-Use Paths (10% Rule required)

- No threshold for limit of disturbance
- Permanent impacts are permitted in the Buffer of less than 5,000 square feet
- Consistent with DNR Wildlife and Heritage Service requirements and recommendations for Habitat Protection Areas other than the Buffer

- Clearing impacts to forest or developed woodland of no more than 20,000 square feet
- Wetland impacts are permitted, provided all MDE requirements have been met

Solar or Photovoltaic Solar (PVS) System Installation (10% Rule is not required if project meets MDE SWM requirements)

- New installation, replacement, repair, or removal of solar or PVS systems, including interconnection to the power grid
- Directional boring associated with solar or PVS system installation
- Up to 5,000 square feet of new solar panels may be located in the Buffer if located over existing impervious surface but may not be located further waterward into the Buffer than existing development
- No more than five (5) trees may be cleared, either inside or outside the Buffer. Any clearing above this limit requires justification or Commission review based on Commission staff analysis.

EXHIBIT A2: ATTACHMENT 1 TECHNICAL AND PROCESS GUIDANCE DOCUMENT

Definitions

Buffer Management Plan - A narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:

- (1) Affect a portion of the Buffer
- (2) Alter Buffer vegetation; or
- (3) Require establishment of a portion of the Buffer in vegetation.

Ground Disturbance - Any alteration or change to the land, including any amount of clearing, grading, or construction activity. Ground disturbance does not include gardening or maintenance of existing grass lawn.

Hardscape/Hardscaping - Includes but not limited to unit pavers (concrete, asphalt, or clay), stamped concrete, finished concrete, or asphalt. Hardscaping materials are considered lot coverage and are included in impervious coverage for stormwater management purposes.

Water Dependent Facilities - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09.

Fillet - The extra wide, curved section of pavement provided at taxiway intersections so the rear wheel of an aircraft does not leave the pavement edge during a turn.

Category I Reporting

On March 1st of each year, MDOT MAA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit only if the projects require tree removal. The report shall include:

- The project's name
- The project's location
- The proposed amount of clearing
- Mitigation calculations and the location of plantings

Category II Written Justification Reporting

By March 1st of each year, MDOT MAA shall provide the Chair of the Commission with a report containing those projects that qualify under Exhibit A2 using the justification option outlined in Section 3.1.9. The report shall list the following information:

- Location of the project
- Site plan
- A summary of proposed impacts and any proposed exceedances of the Category II qualifying parameters
- Date of project approval letter from the Commission

This information will be provided to the Commission at the next scheduled Critical Area Commission meeting.

Project Changes

MDOT MAA shall notify the Commission staff of the following project changes:

- Category I projects that become Category II projects
- All Category II projects
- Non-compliance issues within the Critical Area

Notification of project changes for Category I projects is not required if the project will still qualify under Category I of Exhibit A2.

Buffer and Wetland Delineations

When tidal wetlands are created for mitigation purposes, the Buffer shall be delineated from the edge of newly created wetlands. When nontidal wetlands are created adjacent to the Buffer line, the Buffer shall be expanded to include the newly created nontidal wetlands. When MDOT MAA submits wetland mitigation plans for review by the Commission that affect the Buffer line, plans shall include both the existing and proposed Buffer line. Commission staff should make every effort to attend site visits for projects requiring full Commission review and approval and any potentially eligible Category II projects. If Commission staff is unable to attend a site visit, MDOT MAA shall provide the findings of the site visit to Commission staff as soon as information is available. If Commission staff believes the Buffer delineation should be modified based on those findings by MDOT MAA, Commission staff shall notify MDOT MAA of such disagreement within four weeks of the site visit.

Mitigation

When a temporary solution for a public safety project requires mitigation and the public safety issue will be permanently resolved within two years of the date of MDOT MAA's notification to Commission staff, mitigation for the temporary solution may be counted toward any required mitigation for the permanent solution. MDOT MAA shall provide such information at the time of notification of the permanent solution project. Extension of the two-year period may be granted by Commission staff on a case-by-case basis. Planting of required mitigation for the temporary solution may be delayed until construction of the permanent solution is complete.

Point of Contacts

MDOT MAA will establish a primary point of contact, for all projects, to whom Commission staff shall direct all questions. For design build projects, the primary point of contact will be established after the project is awarded to a contractor. If a contractor is seeking Commission

approval for a contract, MDOT MAA will establish a Project Manager to whom Commission staff shall direct all questions. Full delivery projects may not be on MDOT MAA land, so would be reviewed by Commission staff based on the landowner (i.e., State, local, or private ownership).

Exhibit A3: MARYLAND TRANSIT ADMINISTRATION

1.0 Conditions for General Approval of Maryland Transit Administration (MDOT MTA) 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 General Approval by the Commission allows implementation of the approved programs, activities or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05.

For the purposes of this General Approval, permitted activities within the Critical Area are divided into two categories: Category 1: Limited Reporting Activities, and Category II: Development Activities That Are Minor in Either Size and/or Scope. In addition to satisfying all requirements of COMAR 27.02.05, projects proposed for General Approval must meet the conditions, according to project Category as defined below.

MDOT MTA will identify, and where feasible incorporate, 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(2). MDOT MTA currently reviews projects during planning to determine if they are located in a zone of sea level change and flooding. Planning and engineering work together to avoid or minimize environmental and structural impacts that could occur in these locations. As Coast Smart siting and design guidelines are developed there will be additional measures taken to ensure avoidance and minimization of impacts to the transit network in vulnerable locations.

For projects that involve the removal of existing impervious surfaces, MDOT SHA will use approved landscape practices for stabilization and revegetation of those areas, with a preference for native species where practicable.

2.0 Category I: Limited Reporting Activities

The purpose of Category I is to allow maintenance activities for existing facilities, railroads or roads, landscape projects, stormwater management projects, or minor improvements to existing roads, tracks, and facilities. Projects that qualify under Category I do not require Critical Area 10% stormwater management; nor do they require a climate resiliency assessment. On March 1st of each year, MDOT MTA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit that require removal of trees.

For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a

Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

Any project that qualifies under Category I is permitted in all Critical Area designations and within the Buffer, provided that no more than 5 trees are removed, there are no impacts to habitat protection areas, and disturbed areas are stabilized. Every tree removed must be replaced with one native tree (minimum size ¾-inch caliper). 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 under Category II, including justification for the removal of trees or an alternative planting location. No tree removal or Buffer disturbance is permitted for new stormwater management facilities. There are no forest clearing limits or mitigation requirements for invasive species management, the maintenance of an existing stormwater management facility, or the removal of trees from existing dam embankments.

BENEFICIAL AND NON-DEVELOPMENT RELATED PROJECTS

- Invasive species removal and management, including Phragmites control, or exotic species management, including emerald ash borer control.
- Meadow restoration
- Landscape plantings and tree plantings
- Wetland and stream monitoring
- Removal of debris (no temporary or permanent impacts to the Buffer)
- Soil borings
- Hazardous materials testing
- Installation of monitoring wells

ROUTINE ROADWAY AND TRACK MAINTENANCE AND INSTALLATION OF MINOR SIGNALING DEVICES

- Repair, modification, installation, and/or replacement of:
 - Fencing
 - Signs
 - Signals and monitoring equipment
 - Signal preemption equipment
 - Guardrails and safety barriers
 - Railroad warning devices
 - Improved crossing surfaces at grade for light rail and railroad tracks
 - Overhead signs and lighting
 - Installation of anodes and wire tests
 - Pavement markings
 - Snow and ice detectors
 - Closed Circuit Television (CCTV)
 - Rails, ties or ballast
- Replacement, patching, resurfacing, and/or milling of roadways (including potholes and malfunctioning joints)

- Replacement, patching, resurfacing, and/or milling of intersections, bicycle facilities, and/or parking lots, where there is no net increase in imperviousness and impervious areas that are removed are stabilized
- Replacement or repair of existing hardscaping
- Archaeological testing, all Phase 1 and 2 Assessments and any Phase 3 Assessment not associated with a larger project

FACILITY MAINTENANCE PROJECTS FOR EXISTING FACILITIES ONLY

- Internal modification or internal renovation of buildings/structures
- Exterior renovations and building maintenance where no ground disturbance will occur
- Replacement of hydraulic lifts (which may include removal of contaminated soil)
- Replacement of septic systems outside the Buffer or replacement of septic systems inside the buffer using best available technology

STORMWATER MANAGEMENT PROJECTS

- Pavement removal with stabilization, including areas within the Critical Area Buffer
- Construction of new stormwater management (SWM) facilities within MDOT MTA right-of-way, where no tree removal or disturbance within the Critical Area Buffer will occur
- SWM facility maintenance or retrofit within the footprint of the existing facility including any existing maintenance easement for access to the facility, for up to 20,000 square feet of cutting, clearing, or grubbing of existing woody vegetation. There are no mitigation requirements for the maintenance or retrofit of an existing stormwater management facility.
- Stabilization of existing stormwater outfalls limited to installation of rip rap at pipe outfalls where any incidental impact for access is temporary and the disturbed area is revegetated
- The removal of woody vegetation from existing dam embankments. There are no clearing limits or mitigation requirements.

ROUTINE DRAINAGE, SMALL STRUCTURES, AND BRIDGE MAINTENANCE

Drainage Improvements

- Repair and replacement of
 - pneumatically applied mortar
 - rip rap
 - grout bags
 - lining mortar
 - existing slope protection
 - drainage improvement within existing roadway, light rail tracks, and railroad tracks where impervious surface is not increased and stormwater management is not required
 - ditch to originally authorized condition (sediment and associated vegetation removal)
- Removal of debris from streams, consistent with MDE Waterway Construction Permit

Culverts and Conveyances (box culverts, pipes, etc.)

- Repair, replacement, extension, or removal of:
 - headwalls and end sections

- parapets and railings
- wingwalls
- spalling
- joints
- erosion and sediment control
- culvert
- sediment
- Installation of:
 - grout bags
 - rip rap

Bridges

- Cleaning/repainting
- Replace/repair
 - beams
 - conduits and conduit hangers
 - chain link fencing
 - bearings
 - scuppers
 - parapet walls/guard rail
 - headwalls and wingwalls
 - abutments
 - auxiliary piles (hydraulically)
 - expansion joints
 - kick plates
- Underpinning
- Pile stubbing/splicing/jackets
- Scour stabilization at piers and abutments
- Patching and deck work, including replacement

UTILITY MAINTENANCE (electric, sewer, water, telephone, marine fuel and fiber optic lines)

- Replacement of utilities
- Access crossings
- Utility crossings
- Erosion protection
- Repair of existing appurtenances (valves, hydrants, manholes)

SLOPE STABILIZATION AND DAM EMBANKMENTS (INCLUDING STORMWATER FACILITIES)

- Removal of trees from dam embankments (no limit to number of trees removed)
- Dam maintenance, stabilization and repair
- New slope stabilization and repair of existing stabilization

ACCESS ROADS

- New access roads outside of the Buffer constructed using pervious construction methods, such as cellular confinement systems, and limited in width to no more than 15 ft.

SIDEWALKS AND ADA RAMPS

- Reconstruction of existing sidewalks and new or existing ADA ramps with less than or equal to 250 sq ft of new imperviousness (10% not required)

3.0 Category II: Development Activities That Are Minor in Either Size and/or Scope

Category II projects include new and replacement/repair development activities that may include changes to the layout or design of an existing facility. In some cases, a change of facility type (e.g. – parking lot to building) may be allowed if all parameters are met. All threshold limits described below relate to impacts within the Critical Area only.

Note: 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. If the proposed development project results in a combination of habitat impacts or includes multiple elements of projects listed in this MOU, the Critical Area Commission reserves the right to decide at any time to bring a project that may appear to qualify under the MOU to the full Critical Area Commission for review and approval.

3.1. Qualifying Parameters:

3.1.1. No impacts to Habitat Protection Areas other than the 100-foot Buffer, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) MDOT MTA adheres to all conditions and guidance provided by any MDE authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable).

3.1.2. No new buildings or other facilities that do not qualify as a water-dependent facility (other than roads, bridges, and utilities) are permitted to be located in the Buffer under this MOU unless otherwise authorized. Replacement of existing facilities and structures in the Buffer that meet all other parameters can be reviewed under Category II. Any new lot coverage in the Buffer cannot be located further waterward than existing lot coverage in the Buffer.

3.1.3. For any work conducted in nontidal waters or nontidal wetlands, the applicant shall obtain a Letter of Authorization, a State-wide Letter of Authorization, or a Nontidal Wetlands and Waterways Permit issued by MDE prior to the start of construction. For any work conducted in tidal waters or tidal wetlands, the applicant shall obtain a General Tidal Wetlands License or a Private Tidal Wetlands Permit issued by MDE or a Tidal Wetlands License issued by the Board of Public Works prior to the start of construction.

3.1.4. MDOT MTA will identify, and where feasible incorporate, 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(2).

3.1.5. Forest and developed woodland clearing may not exceed 20,000 square feet for linear projects. Forest and developed woodland clearing may not exceed 5,000 square feet for non-linear projects.

3.1.6. Limits of disturbance (LOD) =

- Linear LOD – No square footage limit. Expansion of lot coverage must be limited to a 5-foot width on either side of the roadway or track.
- Non-linear LOD (for parking lots, buildings, etc.) – 5,000 square feet of disturbance permitted. New buildings and structures cannot exceed 1,200 square feet and new buildings can only be one-story in size. The expansion or replacement of existing buildings or structures cannot have a net increase in lot coverage that exceeds 1,200 square feet.

3.1.7. Shore Erosion Control linear footage limit - 200 linear feet.

3.1.8. For non-linear projects, new lot coverage may not encroach into the Buffer closer than existing lot coverage, unless MDOT MTA provides adequate justification that encroachment is necessary.

3.1.9. Projects may be permitted to exceed Parameters 3.1.5 – 3.1.8 listed above, but MDOT MTA must submit information justifying its inclusion under the MOU. Critical Area staff will evaluate the submittal to determine if an exception to the limits can be granted. MDOT MTA must provide written justification that explains why a development project fits under this MOU despite exceeding disturbance, size, or Buffer encroachment thresholds by minor amounts. Justification factors may include, but are not limited to:

- The nature/intensity of the project is not changing (e.g. – widening a road doesn't change the nature of the road; adding new trail to an existing trail doesn't change the nature/intensity or use of the trail; asphalt will remain asphalt, grass will remain grass, etc.);
- After completion of the work, the site will be restored to original conditions;
- All work will be completed within MDOT MTA right-of-way;
- The activities are maintenance in nature;
- All other parameters of Category II are met; or
- Any building that exceeds the size parameter is for storage or maintenance purposes only
- The purpose of the project is to address safety concerns

The written justification must specifically address why the proposed project cannot meet Category II thresholds. A written ledger of the justification projects shall be submitted to the Commission each year by March 1st.

3.1.10. Non-Buffer forest/developed woodland mitigation = 1:1 mitigation.

3.1.11. Buffer Mitigation

- 2:1 for a new water-dependent facility
- 1:1 for redevelopment of an existing facility or for shore erosion control
- Linear Project Buffer Mitigation
 - New linear project: 2:1
 - Redevelopment:
 - Ground disturbance within existing right-of-way or access path: 1:1
 - Ground disturbance outside of existing right-of-way or access path: 2:1
- An additional 1:1 mitigation is required for any area of canopy coverage removed.

3.1.12. 10% pollutant removal on site or off site, if applicable (e.g. – 10% not required for grass to grass) and in accordance with MDE’s Technical Memorandum #4.

3.2. Eligible Projects:

The following is a list of projects that may meet the Qualifying Parameters under Category II. This list is not inclusive of every project and there may be projects not listed below that meet the Qualifying Parameters and can be proposed by MDOT MTA and reviewed by CAC under Category II.

CATEGORY I PROJECTS (Determined on a Case-by-Case basis regarding 10%)

- Category I projects that fail to meet Category I threshold limits

STRUCTURAL AND FACILITY EXPANSION PROJECTS (10% required)

- Buildings/structures – new, expansion of existing, replacement, relocation, in-kind, etc.
- Repairs to salt domes, engine houses, maintenance sheds or MDOT MTA installations

SHORE EROSION CONTROL (10% not required)

- New/Replacement shore erosion control measures (revetment, bulkheads, living shorelines)

DRAINAGE IMPROVEMENTS (10% not required)

- Installation of new or modification of existing storm drain outfalls
- Installation of new or modification of existing inlets and storm drains

ROADWAY, PARKING AND SIDEWALK PROJECTS (10% required)

- Installation of new bicycle lanes (except for multi-use paths - see Special Projects) or sidewalks
- Reconstruction, patching, and/or resurfacing of roadways, intersections, bicycle facilities, parking lots, and/or sidewalks where an increase in imperviousness is proposed
- Replacement of impervious surfaces with permeable surfaces

- Upgrades to existing facilities in order to meet requirements for Americans with Disabilities Act
- Reconstruction of existing sidewalks and new or existing ADA ramps with more than 250 sqft of new imperviousness

UTILITIES (electric, sewer, water, telephone, marine fuel and fiber optic lines) (10% not required)

- Installation of new utility lines
- Replacement of utilities
- Replacement of access crossings
- Replacement of utility crossings
- Directional boring associated with utility repair/replacement
- Repair of existing appurtenances (valves, hydrants, manholes)

BRIDGES AND SMALL STRUCTURES (see below for 10% requirement)

- Redecking (no 10% required)
- Bank stabilization (no 10% required)
- Pier/pile (in-kind) (no 10% required)
- Bridge and small structure replacement within the same alignment (10% required)

STORMWATER MANAGEMENT (10% not required)

- Stormwater management facility maintenance and retrofit with over 20,000 sq ft of cutting, clearing, or grubbing of woody vegetation within the existing footprint of the facility, including any maintenance easement for access to the facility.
 - No clearing limit for woody vegetation, including in the Buffer
 - Written justification is required for impacts in the Buffer outside of the existing footprint of the facility, or for cutting, clearing, or grubbing of woody vegetation outside of the existing footprint of the facility, including any impacts to the Buffer or cutting, clearing, or grubbing of woody vegetation related to a new access road. Impacts outside the existing footprint of the facility, to the Buffer or to woody vegetation outside the Buffer, shall be mitigated at 1:1.
- Green infrastructure practices that are installed to treat previously untreated impervious surfaces and not otherwise required for a project that meet the following thresholds and requirements:
 - 20,000 sq ft of tree clearing with no more than 5,000 sq ft of clearing in the Buffer
 - Written justification is required if more than 20,000 s ft is proposed to be cleared
 - Mitigation is provided at 1:1 for all forest or developed woodland clearing, including Buffer clearing

SPECIAL PROJECTS

Due to the nature of the projects listed below, the threshold limits and mitigation requirements may be varied from that described above. Unless otherwise specified, the Qualifying Parameters in 3.1 above still apply. MDOT MTA 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.

Nonstructural/Restoration Projects (10% not required)

- No threshold for limit of disturbance or clearing
- Impacts are permitted in the Buffer
- Coordination with DNR, MDE, MHT, USFWS, EPA, NMFS, and USACE occurs
- Planting is provided at a 1:1 ratio for clearing of forest and developed woodland
- Qualifying activities include:
 - Clearing/Removal of more than five (5) hazardous trees
 - Streambank stabilization
 - Revetment above mean high water
 - Weir or dam construction/removal
 - Wetland creation and waterfowl impoundment construction, provided that no Habitat Protection Areas are impacted, other than the Buffer
 - Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls or other related landscape stabilization and restoration techniques
 - Stream Restoration

Multi-Use Paths (10% is required)

- No threshold for limit of disturbance
- Permanent impacts are permitted in the Buffer of less than 5,000 square feet
- Consistent with DNR Wildlife and Heritage Service requirements and recommendations for Habitat Protection Areas other than the Buffer
- Clearing impacts to forest or developed woodland of no more than 20,000 square feet.
- Wetland impacts are permitted, provided all MDE requirements have been met

Solar or Photovoltaic Solar (PVS) System Installation (10% is not required if project meets MDE specifications)

- New installation, replacement, repair, or removal of solar or PVS systems, including interconnection to the power grid
- Directional boring associated with solar or PVS system installation
- Up to 5,000 square feet of new solar panels may be located in the Buffer but may not be located further waterward into the Buffer than existing lot coverage
- No more than five (5) trees may be cleared, either inside or outside the Buffer

EXHIBIT A3: ATTACHMENT 1 TECHNICAL AND PROCESS GUIDANCE DOCUMENT

Definitions

Buffer Management Plan - A narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:

1. Affect a portion of the Buffer
2. Alter Buffer vegetation; or
3. Require establishment of a portion of the Buffer in vegetation.

Ground Disturbance - Any alteration or change to the land, including any amount of clearing, grading, or construction activity. Ground disturbance does not include gardening or maintenance of existing grass lawn.

Water Dependent Facilities - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09.

Category II with Justification

Upon reviewing the submitted information, Commission staff will determine whether the project qualifies under the Category II standards, whether the project qualifies under Category II standards with a written justification (including review by the Executive Director of the Commission) as required in Section 3.1.9 of Exhibit A3, or whether the project will be required to be presented to the full Critical Area Commission for review and approval.

By March 1st of each year, MDOT MTA shall provide the Chair of the Commission with a report containing those projects that qualify under the MOU using the justification option outlined in Section 3.1.9. The report shall list the following information:

- Location of the project
- Site plan
- A summary of proposed impacts/exceedance
- Date of project approval letter from CAC

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 the justification option.

Project Changes

Notification of project changes for Category I projects is not required if the project will still qualify under Category I of this MOU. MDOT MTA shall notify the Commission of the following project changes:

- Category I projects that become Category II projects

- All Category II projects
- Non-compliance issues within the Critical Area

Buffer and Wetland Delineations

When tidal wetlands are created for mitigation purposes, the Critical Area Buffer shall be redrawn from the edge of newly created wetlands. When nontidal wetlands are created adjacent to the Critical Area Buffer line, the Critical Area Buffer shall be expanded to include the newly created nontidal wetlands. When MDOT MTA submits wetland mitigation plans for review by the Commission that affect the Critical Area Buffer line, plans shall include both the existing and proposed Critical Area Buffer line. CAC staff should make every effort to attend site visits for projects requiring full Commission approval and any questionable Category II projects. If CAC staff is unable to attend a site visit, MDOT MTA shall provide the findings of the site visit to CAC staff as soon as information is available. If CAC staff believes the Buffer delineation should be modified based on those findings, CAC staff shall notify MDOT MTA of such disagreement within four weeks of the site visit.

Mitigation

When a temporary solution for a public safety project requires mitigation and will be permanently resolved within two years of the date of Commission notification, mitigation for the temporary solution may be counted toward any required mitigation for the permanent solution. MDOT MTA shall provide such information at the time of notification of the permanent solution project. Extension of the two-year period may be granted on a case-by-case basis. Planting of required mitigation for the temporary solution may be delayed until construction of the permanent solution is complete.

Point of Contacts

MDOT MTA will establish a primary point of contact, for all projects, to whom Commission staff shall direct all questions. For design build projects, the primary point of contact will be established after the project is awarded to a contractor. If a contractor is seeking Commission approval for a contract, MDOT MTA will establish a Project Manager to whom Commission staff shall direct all questions. Full delivery projects may not be on MDOT MTA land, so would be reviewed by Commission staff based on who owns the land, through the local jurisdiction.

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EXHIBIT A4: MARYLAND PORT ADMINISTRATION

SECTION A: MPA Property - Waterfront Industrial Areas (WIAs) & Designated Restoration Areas (DRAs)

For the purpose of this Exhibit, Maryland Department of Transportation Maryland Port Administration (MDOT MPA) property within the Critical Area is designated as either Waterfront Industrial Area (WIA) or Designated Restoration Area (DRA).

MDOT MPA-owned properties or specific areas within MDOT MPA-owned properties which are designated for environmental restoration/conservation activities will be classified and mapped as DRAs. Non-water dependent activities will not be permitted in the Buffer at DRAs under this Exhibit; however, other minor projects and maintenance activities may still be allowed and authorized as described herein. The MDOT MPA-owned properties or portions thereof designated as DRAs shall be mapped and updated annually, as applicable. This is included as Attachment 2 to this Exhibit.

All MDOT MPA-owned properties within the Critical Area, excluding the sites or portions of sites identified as a DRA, are hereby designated as a WIA. The purpose of the WIA designation is to authorize MDOT MPA to perform water dependent and non-water dependent development and redevelopment activities in the Buffer in accordance with the Criteria described herein.

A.1 Justification for WIA and DRA Designation

Natural Resources Article § 8-1808.3(b)(3) provides exceptions to permit impervious surface for non-water dependent projects within the Buffer “as provided in a waterfront revitalization area or a waterfront industrial area under a local program.” MDOT MPA is the state agency responsible for increasing waterborne commerce through Maryland ports for the benefit of the citizens of the state. To fulfill its mission, MDOT MPA must operate along the water’s edge. Many of the MDOT MPA’s operations are water-dependent. Dredged material containment facilities require direct access to water for offloading and placement of dredged material. Marine terminals require direct access to water as an integral part of their function to connect waterborne cargo to highway and rail transportation networks. Cargo storage areas are highly developed and industrial in nature, with mostly paved surfaces that experience heavy loading from cargo handling activities. To accommodate some types of cargo, other non-water dependent storage and processing facilities are required on the terminal to support operations, and covered space such as on-dock transit sheds are required to protect specialized cargo.

A.2 Critical Area Habitat and Water Quality Requirements for Development Projects Located in WIAs and DRAs

COMAR 27.02.05.01.B provides the Commission the ability to vary from the traditional Criteria applicable to a State agency, if described within an MOU. Based on the unique nature of all MDOT MPA sites, Commission and MDOT MPA staff collaborated extensively to evaluate traditional stormwater and Buffer mitigation requirements and propose an alternative set of mitigation standards that addresses both water quality and habitat needs¹. This Exhibit authorizes MDOT MPA to apply this alternative set of mitigation standards to all projects and activities within the Critical Area as outlined in Section C. The alternative mitigation standards will address both water quality and habitat goals of the Critical Area and may be met by implementing either water quality projects or habitat projects either on-site, off-site, or through offsets. These alternative mitigation standards replace the traditional stormwater and Buffer mitigation criteria. To facilitate the alternative standards, mitigation requirements will be translated into a fee-in-lieu (FIL) program to enable MDOT MPA to both track project implementation and transfer funds to an approved third party in accordance with a separate partnership agreement as described in Section C.

SECTION B: Categories of General and Commission Approval

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 General Approval by the Commission allows implementation of the approved programs, activities or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05.

Proposed MDOT MPA activities within the Critical Area are divided into three categories:

- Category I: Limited Reporting Activities
- Category II: Development Activities That Are Minor in Either Size and/or Scope
- Category III: Development Activities Which Require Full Review and Approval by the Critical Area Commission.

For the purposes of General Approval, projects that qualify under Category I and II may be permitted under the processes outlined below, reviewed and approved by the Commission Staff. Projects that qualify under Category III must be reviewed and approved by the full Commission in accordance with COMAR 27.02.05 and COMAR 27.02.06.

¹ Per COMAR 27.01.09, the Commission may accept water quality and habitat enhancement projects as offset to standard Buffer Mitigation. Per COMAR 27.02.05.03.F(2), an agency may provide stormwater practices offsite when on-site practices are not practical and may propose offsets if those practices are equivalent to the necessary water quality pollutant reduction.

Regarding climate resilience, MDOT MPA identifies, and wherever feasible, incorporates climate resilient practices in order to minimize environmental and/or structural damage due to coastal hazards, extreme weather events, sea level rise, or other coastal impacts per COMAR 27.02.05.02A(2). The MDOT MPA's climate resiliency strategy reflects this commitment, and MDOT MPA reviews projects during the planning phase to determine if they are located in an area potentially vulnerable to sea level change and/or flooding. MDOT MPA works across departments to avoid or minimize potential environmental and structural impacts that could occur in these locations. MDOT MPA reviews all applicable capital projects in accordance with the Coast Smart Construction Program guidance, as amended, to ensure avoidance and minimization of impacts to projects in vulnerable locations. Many MDOT MPA facilities are considered water dependent uses and may qualify for categorical exemption. However, climate resiliency is linked to the MDOT MPA mission, and resilience strategies will be implemented when feasible to avoid and minimize impacts to MDOT MPA properties in vulnerable locations and to increase the overall resiliency of existing facilities.

For all activities under this Exhibit, MDOT MPA is required to obtain any applicable federal, state, or local authorizations.

B.1 CATEGORY I: LIMITED REPORTING ACTIVITIES

The purpose of Category I is to allow maintenance activities for existing facilities or roads, landscape projects, stormwater management projects, or minor improvements to existing roadways and facilities.

Projects that qualify under Category I do not require a climate resiliency assessment under the Commission's regulations (COMAR 27.02.05.02A(2)).

B.1.1 Qualifying Parameters for Category I Projects:

- 1.1.1 Any project that qualifies under Category I is permitted in all Critical Area designations, including the WIA, DRA, and within the Buffer (unless otherwise noted below).
- 1.1.2 Other than as described in Section 1.1.3 below, the following tree and woody vegetation removal requirements apply:
 - No more than 5 trees having a 1 inch diameter at breast height (DBH) or greater may be removed for each qualifying Category I project. For each tree 1 inch DBH or greater removed, a replacement tree must be planted (native species, minimum size $\frac{3}{4}$ -

inch caliper) and reported per Section D below. Trees removed from the Buffer must be replaced in the Buffer.

- No more than 500 square feet of existing woody vegetation may be removed for each qualifying Category I project.

If more than 5 trees having a 1 inch DBH or greater or an area greater than 500 square feet of existing woody vegetation are required to be removed, the project must be submitted to the Commission staff for review under Category II.

1.1.3 There are no forest clearing limits or mitigation requirements for the following activities*:

- Invasive species management, as defined as species that are invasive to Maryland listed within the *Plant Invaders of Mid-Atlantic Natural Areas (latest edition)* provided that the invasive removal is considered beneficial and is not associated with a development or redevelopment activity.
- The maintenance of an existing stormwater management facility or drainage swale.
- The removal of trees from existing dam embankments or from existing dredged material containment facility dikes when the tree removal is required by state or federal regulatory agencies, such as the Maryland Department of the Environment's Dam Safety Division, and when there are no other Habitat Protection Area (HPA) impacts (i.e., nontidal wetlands).

*All areas cleared for the aforementioned activities must be stabilized upon completion of the activity with native ground cover or other native vegetation as necessary.

1.1.4 Any Category I project that requires MDE stormwater management compliance (i.e., impervious area that must be treated for water quality) will be required to be submitted under Category II.

1.1.5 Category I-B Projects require review and approval by Commission staff. See Section B.1.3 and B.1.4 for details.

B.1.2 Category I-A Eligible Projects:

The purpose of Category I-A is to allow for non-development related activities, maintenance activities for existing facilities, and minor improvements to existing facilities, including dredged material containment facilities as listed below. Projects that qualify under Category I-A do not require mitigation other than the replacement of removed trees as described in Section 1.1.2. Only the Category I-A projects that require the replacement of removed trees shall be reported, on an annual basis, as described in Section D.

BENEFICIAL AND NON-DEVELOPMENT RELATED ACTIVITIES

- Landscape plantings and tree plantings
- Seeding and mulching
- Invasive species removal and management, including Phragmites control
- Wetland remediation and maintenance
- Removal of trash and debris
- Demolition and removal of impervious area stabilized with native ground cover
- Installation of educational and informational signage
- Installation of benches for public use

ROUTINE LANDSCAPE MANAGEMENT ACTIVITIES REQUIRED FOR MDOT MPA OPERATIONS

- Removal and management of other species considered invasive to cargo export locations as listed within the *MDOT MPA Vegetation Management Activities General Overview* summary (Attachment 3 to this Exhibit)
- Removal and maintenance of vegetation to maintain wildlife habitats

INVESTIGATORY AND MONITORING ACTIVITIES

- Stream monitoring
- Wetland monitoring
- Soil borings, soil sampling, test pits, and exploratory trenching
- Installation of monitoring wells and other scientific measuring/monitoring devices

SAFETY, SECURITY, AND TRAFFIC/VESSEL MANAGEMENT AND SUPPORT EQUIPMENT

Installation or repair/modification/replacement of the following:

- Fencing and gates
- Signs
- Lighting on existing impervious surface

- Prefabricated security booths on existing impervious surface
- Pavement markings or pavement grooving/rumble strips
- Vehicle loop detectors and barrier arm control gates
- Traffic signals and monitoring equipment
- Guardrails, safety barriers, and traffic bollards
- Poles and overhead structures that support railroad warning devices, signs, lighting, electric, communication equipment, traffic detectors, and cameras
- Mechanical/electrical support equipment (transformers, electric/control panels, utility/pump enclosures, electric vehicle charging stations) installed on existing impervious surface
- Security support equipment (vehicle/cargo scanning and screening devices) installed on existing impervious surface

UTILITIES (electric, sewer, water, communication, gas, storm drain)

- Repair, replacement, or relocation of existing utilities and/or utility appurtenances (vaults, manholes, valves, hydrants) when the disturbed area is returned to existing conditions. Relocated utility lines shall not serve new development or redevelopment.
- Installation of new in-ground utilities (electric, sewer, water, communication, gas, storm drain) when the disturbed area is returned to existing conditions. New in-ground utilities shall not serve new development or redevelopment that exceeds 250 square feet of disturbance/footprint.

MAINTENANCE, REPAIRS, OR MINOR IMPROVEMENTS TO EXISTING MDOT MPA FACILITIES

- Maintenance of existing pavement, parking lots, roadways, trails, open storage areas and sidewalks including pavement replacement, overlay, patching and/or resurfacing
- Conversion of one type of impervious surface to another type (i.e. replacing asphalt paving with concrete paving), but not including intensification of use (e.g., construction of a building)
- Wharf and bridge redecking, overlay and minor rehabilitation
- Repair or replacement of existing mooring bollards, capstans, and cleats including foundation upgrades when the disturbed area is returned to existing conditions
- Repair or replacement of fenders
- Repair, replacement, extension, or removal of culverts, headwalls and outfalls

- Repair, replacement, or maintenance of existing railroad tracks and crane rail when the disturbed area is returned to existing conditions
- Subsurface repairs to existing wharf structures when the disturbed area is returned to existing conditions
- In-kind maintenance/repair of existing stormwater management facilities
- Maintenance/repair/replacement of existing bulkhead when the disturbed area is returned to existing conditions
- In-kind maintenance/repair/replacement of existing shoreline revetment or slope protection
- In-kind maintenance/repair of dams/embankments
- Improvements with less than 250 square feet of disturbance/footprint located in the WIA or outside of the Buffer at a DRA, and not associated with any other project

STANDARD OPERATIONS AND MAINTENANCE AT EXISTING DREDGED MATERIAL CONTAINMENT FACILITIES

- Dredged material inflow activities
- Site management activities within the dredged material containment area such as construction of interior dikes, dewatering, grading, and crust management
- Construction or maintenance of access roads within the dredged material containment area or at the top of containment dikes draining to the interior
- Activities within the dredged material containment area related to the construction or maintenance of DRAs
- In-kind maintenance/repair of existing dredged material containment facility dikes
- In-kind maintenance/repair/replacement of existing dredged material containment facility spillways

ABOVE-GROUND STRUCTURES

- Demolition of an existing above-ground building/structure
- Exterior renovations and building maintenance where no ground disturbance will occur
- In-kind replacement of existing fuel/oil tanks over existing impervious surface
- In-kind replacement of construction offices, trailers, or equipment sheds
- Relocation of construction offices or trailers that are on existing impervious surface to another location on existing impervious surface
- Relocation of construction offices or trailers to a new location on pervious surface provided that:

- The original location is restored to previous and planted with native ground cover or other native vegetation; and
- If located on a DRA, the new location of the structure is outside of the Buffer
- In-kind replacement of tarp/fabric buildings (no increase in footprint)
- In-kind replacement of canopy structures (no increase in footprint)
- In-kind replacement of above ground storage tanks (no increase in tank capacity) including updates to foundation resulting in less than 250 square feet of new disturbance/footprint

B.1.3 Category I-B - Eligible Projects:

The purpose of Category I-B is to allow for minor improvement projects to existing facilities as listed below that require mitigation as described in Section C. **All projects that qualify under Category I-B shall be submitted for review and verification of the fee-in-lieu (FIL) mitigation required to Critical Area Commission staff, and shall be reported on an annual basis, as described in Section D.**

MINOR IMPROVEMENTS TO EXISTING MDOT MPA FACILITIES

- Installation of a new or out-of-kind replacement of an existing tarp/fabric building over existing impervious surface up to 10,000 SF in size
 - Requires FIL mitigation for the square footage of new or out-of-kind replacement structure per Section C
- Installation of a new or out-of-kind replacement of an existing canopy structure over existing impervious surface up to 10,000 SF in size
 - Requires FIL mitigation for the square footage of new or out-of-kind replacement structure per Section C
- Out-of-kind replacement of an existing above ground storage tank with an increase in capacity or footprint or updates to foundation resulting in 250 square feet or more new disturbance/footprint
 - Requires FIL mitigation for the square footage of new impervious surface or out-of-kind replacement structure per Section C
- Installation of a new or out-of-kind replacement of an existing trailer or pre-engineered structure over existing impervious surface not associated with a specific construction project (i.e., office space) up to 2,500 SF in size
 - Requires FIL mitigation for the square footage of new or out-of-kind replacement structure per Section C

Note: New above ground storage tanks and new/out-of-kind structures that exceed the limits prescribed above requires review by the Commission staff under Category II.

B.1.4 Category I-B - Project Submittal Requirements:

The following information must be included as part of an electronic submittal:

- A description of the work proposed;
- A location map;
- A plan showing existing and proposed conditions, including the following features:
 - Critical Area Boundary;
 - Limits of Disturbance (LOD) and proposed impacts;
 - For out-of-kind replacement of existing above ground storage tank, new impervious area and location inside or outside of the Buffer, if applicable; and
- A computation of the required FIL mitigation and a description of how MDOT MPA intends to utilize the FIL funds.

B.2 CATEGORY II: DEVELOPMENT ACTIVITIES THAT ARE MINOR IN EITHER SIZE AND/OR SCOPE

Under Category II, redevelopment, new structures, and new at-grade surfaces may occur in all Critical Area designations, including the WIA and DRA, provided the following limits are met. All threshold limits described below relate to impacts within the Critical Area only.

Note: Early coordination with Commission staff is required in order to determine if the proposed project is eligible under Category II of this Exhibit, or if the project will require full Commission review and approval. If the proposed development project results in a combination of habitat impacts or includes multiple elements of projects listed in this Exhibit, the Commission reserves the right to decide at any time to bring a project that may appear to qualify as Category II to the full Critical Area Commission in accordance with Category III for review and approval.

B.2.1 Qualifying Parameters for Category II Projects:

- 2.1.1 No more than 5,000 square feet of forest or developed woodland clearing is permitted.
- 2.1.2 No more than 5,000 square feet of new impervious surface permitted.

- 2.1.3 New structures (walled or roofed building or above ground storage tank), additions to structures, and/or conversion of at-grade surfaces to structures shall not exceed 20,000 square feet.
- 2.1.4 Shore erosion control projects shall not exceed 500 linear feet.
- 2.1.5 Non-water dependent projects and activities shall be located outside of the Buffer at DRAs.
- 2.1.6 No disturbance to natural vegetation in the Buffer is permitted for new stormwater management facilities.
- 2.1.7 Except as provided under this subsection, projects which cannot meet these thresholds require full review by the Critical Area Commission under Category III. Projects may be permitted to exceed the parameters listed above, but MDOT MPA must submit information justifying its inclusion under Category II. Critical Area staff will evaluate the submittal to determine if an exception to the limits can be granted. MDOT MPA must provide written justification that explains why a development project fits under Category II despite exceeding the 2.1.1, 2.1.2, 2.1.3, and/or 2.1.4 thresholds by minor amounts. Justification factors may include, but are not limited to:
- After completion of the work, the site will be restored to original conditions;
 - The activities are maintenance in nature;
 - All other parameters of Category II are met;
 - All newly proposed impervious area is treated for stormwater management quality;
 - The project addresses public safety and security, per compliance with federal regulations for port facilities such as U.S. Department of Homeland Security or U.S. Coast Guard;
 - The project is beneficial and non-development related, such as an environmental restoration project;
 - Environmental compliance with other state/federal agency operating permits or agreements such as a consent decree for contaminated soil; or
 - Upgrades to existing facilities in order to meet requirements for Americans with Disabilities Act.

The written justification must specifically address why the proposed project cannot meet Category II thresholds. A written ledger of the justification projects shall be submitted to the Commission per Section D below.

B.2.2 Category II - Project Submittal Requirements:

The following information must be included as part of the submittal:

- A description of the work proposed, including the proposed impacts and required mitigation;
- A location map;
- Site plan(s) showing existing and proposed conditions, including the following features:
 - Critical Area Boundary;
 - 100-foot and/or Expanded Buffer;
 - Limits of Disturbance (LOD) and proposed impacts;
 - Square footage of the following, if applicable:
 - New impervious surface in the Critical Area outside the Buffer;
 - New impervious surface in the Critical Area within the Buffer or over open-water;
 - New structure in the Critical Area over existing impervious surface;
 - Impervious surface removed;
- Forest and developed woodland clearing;
- A computation of the required FIL mitigation and a description of how MDOT MPA intends to utilize the FIL funds
- A statement that describes how the project incorporates coastal resilient practices that address coastal hazards, extreme weather events, sea level rise, and other impacts as required by COMAR 27.02.05.02A(2).
- Status of MDE Stormwater Management and Erosion & Sediment Control plan review with description of how stormwater management is being addressed, if applicable;
- Status of MDE tidal or nontidal wetlands permit or authorization, if applicable;
- Agency Review Letters: Department of Natural Resources (DNR) Wildlife and Heritage Service, Maryland Historical Trust, and US Fish and Wildlife Service;
- If applicable, agency review letter from DNR Fisheries;
- If onsite planting mitigation is proposed to offset clearing, a planting plan or a Buffer Management Plan in accordance with COMAR 27.01.09.01;
- If applicable, justification to allow additional minor projects to exceed current Category II thresholds.

B.3 Category III - Development Activities Which Require Full Review and Approval by the Critical Area Commission:

The following list includes, but is not limited to, projects which, regardless of size, require full review by the Critical Area Commission:

- Development activities that exceed the qualifying parameters for Category II projects listed in B.2.1 and cannot meet the justification requirements as outlined B.2.1.7
- New and/or expanded Dredged Material Containment Facilities
- New Marine Terminal
- Filling open water for a new island restoration project
- New coverage over open water to create berth expansions or other cargo handling/operation upland areas (i.e., wharf, pier, bridge, loading dock)
- Minor Solar Energy Generating Systems, unless the Chairman determines that the project may be submitted and reviewed under Category II.

Category III projects will be required to submit materials in accordance with the Commission's Project Submittal Checklist (available on the Commission's webpage). Mitigation requirements for these projects can be fulfilled using the measures outlined under Section C.

SECTION C: Habitat and Water Quality Mitigation Requirements and Fee-in-Lieu Program

C.1 Habitat and Water Quality Mitigation Requirements

Projects that qualify under Category I-B, Category II, and Category III may require mitigation for habitat and water quality impacts based on the measures outlined in this subsection. Mitigation requirements may be fulfilled through a fee-in-lieu program as described in Section C.2 below for the purposes of meeting habitat and water quality goals.

C.1.1 Habitat and Water Quality Mitigation Rates

The required habitat and water quality mitigation will be calculated at a square foot rate per the following ratios:

- Square footage of new impervious surface:
 - 1:1 in the Critical Area outside the Buffer;
 - 2:1 in the Critical Area within the Buffer, or on newly created upland in or over open water; and

- Additional 1:1 for projects that are exempt from MDE stormwater management compliance due to the size of the project (i.e., projects with less than 5,000 square feet of disturbance).
- Square footage of new structure or out-of-kind replacement structure over existing impervious surface:
 - 0.5:1 in the Critical Area.
- Square footage of new or expanded stone revetment or shoreline armoring above mean high water associated with a shore erosion control project:
 - 1:1 in the Critical Area.
- Square footage of forest and developed woodland canopy clearing:
 - 1:1 in the Critical Area (unless equivalent planting mitigation is performed onsite or through an approved mitigation project).
- Individual (isolated) trees removed:
 - Calculate mitigation requirements at 200 square feet per individual tree removed (unless equivalent planting mitigation is performed onsite or through an approved mitigation project).

C.1.2 Reduction of Mitigation Requirements:

MDOT MPA may deduct from the total mitigation requirement areas of impervious surface removed. The areas of impervious surface removed are deducted after the total square foot mitigation requirement is calculated using applicable ratios, as outlined above. In addition, the areas of impervious surface removed must meet the following parameters:

- The impervious surface removal is within the scope of the proposed project; and
- The area of impervious surface removed is stabilized with native ground cover or other native vegetation.

C.1.3 Mitigation Exemption for Restoration Projects:

For beneficial and non-development related projects (e.g., MS4 restoration), new impervious areas constructed within the footprint of a new or retrofit stormwater management facility site for the sole purpose of maintenance access will not generate a mitigation requirement.

C.2 Fee-In-Lieu Program Standards

MDOT MPA may satisfy Critical Area mitigation requirements through a FIL program as described below and utilizing the FIL for appropriate projects, as approved by the Critical Area Commission.

C.2.1. FIL Rate:

The FIL rate is **\$1.50** per square foot of required habitat and water quality mitigation.

C.2.2. Use of FIL:

MDOT MPA may use the FIL money generated from Critical Area impacts for:

- Plantings (either inside or outside of the Buffer);
- Stormwater management practices (this does not include practices that are required for compliance with other regulatory approvals);
- Other innovative/beneficial habitat and water quality projects; or
- In accordance with a partnership through a separate agreement.

C.2.3. Obligations for using FIL:

MDOT MPA shall use FIL funds in a timely manner. MDOT MPA is required to indicate the intended use of FIL mitigation funds for each project that generates a FIL mitigation requirement as part of the project submittal and approval process as outlined above (Sections B.1.4 and B.2.2). If at any time the FIL fund balance equals or exceeds \$100,000, or if MDOT MPA is unable to utilize FIL funds in a timely manner, MDOT MPA shall submit information to Commission staff regarding MDOT MPAs intended use of the FIL funds, including timing. Commission staff may present this information to the Critical Area Commission for their concurrence. Additionally, MDOT MPA shall track and report on the FIL funds collected, transferred, and encumbered on an annual basis per the terms of Section D below.

SECTION D: Annual Reporting:

MDOT MPA shall submit an annual report to the Chair of the Commission by March 1st for the previous calendar year that includes the following:

1. Category I projects requiring replacement of trees (Section B.1.1.2) . The report shall include:
 - a. Project name;
 - b. Project location;
 - c. Number of trees removed for each project (no more than 5 with a 1 inch DBH or greater); and
 - d. Location of the replacement plantings
2. Projects generating FIL mitigation under Category I-B (Section B.1.3), Category II (Section B.2), or Category III (Section B.3). The report shall include:
 - a. Project name;
 - b. Qualifying project type (i.e., Category I-B, Category II, or Category III);
 - c. Date of approval;
 - d. Required FIL mitigation amount;
 - e. Description of FIL use (i.e., an MDOT MPA project or through an MDOT MPA partnership agreement)

- f. Construction status of the project generating the FIL mitigation
3. An accounting summary of the overall FIL program. This summary shall include:
 - a. FIL balance at the beginning of the reporting period;
 - b. FIL generated;
 - c. FIL spent;
 - d. FIL transferred to a third party; and
 - e. FIL balance at the end of the reporting period
4. Category II projects that exceed parameters with justification (Section B.2.1.7).
5. An updated map of all areas identified as DRAs, as applicable (Section A and Attachment 2 to this Exhibit).
6. An updated MDOT MPA Vegetation Management Activities General Overview summary, as applicable (Section B.1.2).

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Exhibit A4: ATTACHMENT 1

Definitions

Berth - The wharf space at which a ship docks. A wharf may have several berths.

Bridge - A structure carrying a road, path, railroad, or canal across a river, ravine, road, railroad, or other obstacle.

Capstan - A mechanical device used for winding rope, cable, or chain, powered by a motor or pushed around by lever.

Cleat - A device attached to a wharf to secure mooring lines.

Crust management - Phase of dredged material management in which water from the dredged material slurry is pumped off or drained off in order to promote the drying and consolidation of material. Trenching in the soil crust may occur in this phase to extract pore water to further assist in material consolidation.

Developed woodlands - An area of trees or an area of trees and natural vegetation that is interspersed with residential, commercial, industrial, institutional, or recreational development.

Disturbance - Any alteration or change to the land, including any amount of clearing, grading, or construction activity.

Dolphin - An isolated marine structure, typically consisting of a cluster of pilings, used for the berthing or mooring of vessels. A breasting dolphin assists with the berthing of vessels by absorbing some of the berthing loads and keeping the vessel from pressing against the pier structure. A breasting dolphin may also serve as a mooring point. A mooring dolphin is used for mooring only, providing a location to which a vessel can secure itself with ropes, commonly used near pier structures.

Dredged Material Containment Facility (DMCF) - Any placement site for the containment of material dredged from navigation channels and the Port of Baltimore, including placement sites designated as ecosystem restoration sites for the purposes of this document.

Fender - A device typically mounted to the end of a marine structure, used to prevent ships, boats and other naval vessels from colliding against docks, wharves and piers.

Limit of disturbance (LOD) - The boundary outside of which earth disturbance is not permitted to occur.

Mooring bollard - A line-securing device fixed to the ground on a wharf around which a vessel's mooring and berthing lines are secured.

New impervious surface (as determined by MDE Sediment and Stormwater Plan Review Division) - Any surface that does not allow stormwater to infiltrate into the underlying soil. Examples include pavement, rooftops, and certain gravel surfaces used for vehicular traffic.

Out-of-kind replacement (of a building, trailer, canopy, or above ground storage tank) - Replacement of an existing structure with a similar structure but with an increase in footprint or capacity. Replacing an existing structure with a similar structure with a decrease in footprint or capacity will not be considered out-of-kind replacement.

Pier - A structure which juts out into a waterway from the shore, for mooring vessels and cargo handling.

Redecking - Replacement of the existing concrete slabs on a wharf structure, which may be cast-in-place or precast.

Spillway (of a DMCF) - A structure used to release water from an impoundment area when open and retain or hold water when closed.

Upland - Includes areas landward of the mean high water line and the landward edge of tidal wetlands, and for the purposes of this document, new areas of land or structures built in or over tidal waters or wetlands used for cargo handling or port operation area, such as a berth, wharf, pier, bridge, or loading dock. In-water structures that are not used directly for cargo handling or port operation areas, such as offshore mooring or berthing structures and associated catwalks or offshore hazard signage structures would not be considered upland.

Water-dependent facility - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

Wharf - The place at which ships tie up to unload and load cargo.

Woody vegetation - Includes perennial trees and shrubs having stems and bark. Woody vegetation does not include grasses, herbaceous, or annual plants.

END OF ATTACHMENT 1

Exhibit A4: ATTACHMENT 2

Designated Restoration Areas

Exhibit A4 of the Memorandum of Understanding agreement between the Maryland Department of Transportation and the Critical Area Commission (CAC) recognizes that Maryland Department of Transportation Maryland Port Administration (MDOT MPA) property within the Critical Area is designated as either Waterfront Industrial Area (WIA) or Designated Restoration Area (DRA). The MDOT MPA properties or specific areas within MDOT MPA-owned properties that are designated for environmental restoration/conservation activities are classified as DRA. The DRAs are described and mapped below.

1. Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island

Background

Poplar Island is an environmental restoration project located in the Chesapeake Bay in Talbot County, Maryland, about 39 miles (34 nautical miles) south-southeast of the Port of Baltimore and two miles northwest of Tilghman Island. The Poplar Island project was developed through the cooperative efforts of the U.S. Army Corps of Engineers and the MDOT MPA along with private, commercial, and environmental organizations. Dredged material from the Upper Chesapeake Bay Approach Channels to the Port of Baltimore is being beneficially used to restore wetland and upland habitat which had eroded away over time. Construction of the Poplar Island exterior dikes started in 1998 and continued in three Phases. Construction of Phase I, the 640-acre northern portion which includes Cells 1, 2, and 3, was completed in 2000. Dredged material inflow commenced in 2001. Construction of Phase II, the 500-acre southern portion which includes Cells 4, 5, and 6, followed and was completed in 2002. Construction of Phase III, the 575-acre expansion which includes Cells 7, 8, 9, 10 and 11, and an open-water embayment, began in 2016. The Phase III perimeter dikes were completed in late 2020 and dredged material inflow is scheduled to begin during the 2020/2021 inflow season. Phase III also includes the dike raising of Upland Cells 2 and 6 to allow for additional placement capacity. Work associated with the dike raising is currently ongoing. Ultimately, the site will be approximately 1,715 acres in size and will provide approximately 68 million cubic yards of dredged material placement capacity. At project completion, Poplar Island will restore approximately 776 acres of wetland, 829 acres of upland, and 110 acres of open-water embayment habitat.

Mapping

Figure 1A shows an aerial of the Poplar Island project as of 2019. Figure 1B shows the site layout with the various cell areas labeled. The entire Poplar Island is classified as DRA.

Figure 1A: Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island - 2019 Aerial Photograph



Figure 1B: Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island - Site Layout and Cell Designations



2. Hart-Miller Island Dredged Material Containment Facility

Background

The Hart-Miller Island (HMI) Dredged Material Containment Facility (DMCF) is located in the northern portion of the Chesapeake Bay in Baltimore County, Maryland. Originally part of a peninsula that extended from Edgemere, Maryland, the remnants of two eroded islands, Hart and Miller, were joined by the construction of a dike between 1981 to 1984, forming the 1040-acre facility. The HMI DMCF is separated by an interior cross dike into a North Cell (~750 acres) and a South Cell (~290 acres). A 3,000 ft beach was also constructed between the Hart and Miller Island remnants, designated as HMI State Park and operated by the Maryland Department of Natural Resources (DNR). Dredged material from the Baltimore Harbor navigation channels was placed into the HMI DMCF containment areas until 2009, to be followed by wildlife habitat restoration activities. Together the North and South Cell areas have received 100.87 million cubic yards of dredged material. Construction of the South Cell Environmental Restoration Project was completed in 2006, restoring the cell to 80 acres of upland grasses and shrubs, 200 acres of wetlands and mudflats, a nesting island, and a 15-acre pond designed for use as wildlife habitat and passive recreation. The South Cell was opened for public access in 2016 through an intergovernmental agreement between DNR, MDOT MPA and Maryland Environmental Service. Active construction activities to develop the North Cell habitat restoration are still ongoing. Once complete, the facility including the North and South Cells will be turned over to DNR for public use as a passive recreational and wildlife habitat area.

Mapping

Figure 2 shows a map of HMI. The entire island is classified as DRA.

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Figure 2: Hart Miller Island DMCF



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3. Masonville Cove

Background

The Masonville Cove restoration area is a component of the environmental mitigation provided for construction of the Masonville DMCF, which was built between 2007 and 2010 to provide confined disposal for the placement of dredged material from the Baltimore Harbor. Masonville Cove is located approximately four miles upstream of the Key Bridge and approximately one mile downstream of the Hanover Street Bridge on the southern shore of the Patapsco River in Baltimore City, Maryland. The Masonville Cove property is just west of the Masonville DMCF and consists of 46.845 acres of various environmental mitigation projects required under the state and federal permits associated with the construction of the Masonville DMCF, including tidal wetland creation, tidal wetland enhancement, nontidal wetland creation, and reef and fish habitat improvement. In addition, when the terrestrial habitat was remediated, the sediment contained a higher level of contamination than was anticipated, so Maryland Department of the Environment regulations required a two-foot soil cap over much of the restoration site. Community enhancement projects were also incorporated, including construction of an environmental education center adjacent to the restoration site, with programming provided by Living Classrooms Foundation for local area students. Construction of the Masonville Cove restoration projects started in 2007 and was completed in 2019. The MDOT MPA is currently in the process of placing Masonville Cove into an environmental easement with the Maryland Environmental Trust and Baltimore Green Space.

Mapping

Figure 3 shows a map of Masonville Cove. The DRA boundary is shown as a red line with red text labels defining the limits. Starting in the southwest corner, the DRA boundary follows the shoreline along the western and northern edges of Masonville Cove. It then follows the shoreline adjacent to Masonville Marine Terminal towards the Masonville DMCF. Where it meets the Masonville DMCF, the DRA boundary is defined by a fence. It then follows a split rail fence along the edge of the access road on the eastern edge of Masonville Cove. At the southeast corner, the DRA boundary then follows the edge of the access road back towards the Environmental Education Center, where it then follows the edge of pavement of the existing parking lot. The DRA boundary then follows the perimeter fence along Frankfurst Avenue and then the property line on the southern edge of Masonville Cove back to the southwest corner. The DRA boundaries vary slightly from the proposed environmental easement boundaries, as those were created based on the soil capping and before all restoration work was completed defining the site features.

Figure 3: Masonville Cove



4. Cox Creek Dredged Material Containment Facility Forest Conservation Easement and Swan Creek Mitigation Wetland Areas

Background

The Cox Creek DMCF is located approximately one mile south of the Francis Scott Key Bridge, on the western shore of the Patapsco River in the upper Chesapeake Bay in Anne Arundel County, Maryland. It is designed to accept dredged material from the Baltimore Harbor. The U.S. Army Corps of Engineers Baltimore District originally constructed the Cox Creek DMCF in the mid-1960s. Dredged material was periodically placed in the site from the mid-1960s to 1984. In 1993, the Cox Creek DMCF property was purchased by MDOT MPA. The upland area adjacent to the Cox Creek DMCF was previously the property of the Cox Creek Refining Company, which operated from 1959 to 1995. The Refining Company closed in 1995 and that land was also sold to MDOT MPA in 1997.

In 2002, MDOT MPA entered into a Forest Conservation Easement (FCE) agreement with the Maryland Environmental Trust and the North County Land Trust to preserve, protect, and maintain the dominant scenic, woodland, and wetland characteristics of the forest and non-tidal wetlands on the Cox Creek DMCF property in perpetuity. The FCE agreement states that MDOT MPA will manage the easement as passive recreation and wildlife area under a forest stewardship plan and maintain 100 feet of a vegetative buffer along the Patapsco River and the Swan Creek Mitigation Wetland (SCMW).

In order to get the Cox Creek DMCF into operating condition, MDOT MPA made several improvements to the existing 1990s DMCF structure, including stabilizing the dike and raising it to 36 feet above mean lower low water, installing stone armor protection on the outer slope of the dike, constructing a stormwater management system, and constructing a pier for the mechanical unloading of dredged material. Construction of these improvements began in 2002 and was completed in 2006. The renovations resulted in the loss of 4.87 acres of Patapsco River shallow open water habitat, and Maryland Department of the Environment required mitigation for the impacts. A mitigation plan was developed to enhance approximately 11.13 acres of wetlands in the neighboring Swan Creek watershed. Before development, the mitigation area consisted of marsh dominated by common reed (*Phragmites australis*), an old settling pond, and a fringe buffer of successional forest. The SCMW was constructed in 2003 and included an inlet to create a tidally influenced system and four zones of marsh habitat (open water, low marsh, high marsh, and salt bush). A cobble riffle was also constructed in 2006 to connect the non-tidal wetland in the adjacent FCE with the tidal SCMW by allowing for the movement of water and fish. That same year, to protect the SCMW beach from high wave energy erosion, 325 reef balls were installed in the tidal water east of the beach. Three tree planting mitigation areas were also established within the SCMW in response to Critical Area disturbances caused by the creation of the wetland and an observation deck built within the area for visitors.

The Cox Creek DMCF is currently undergoing an expansion to raise the existing dikes and extend them around the adjacent upland area, creating additional placement capacity for dredged material.

Mapping

Figure 4 shows a map of the Cox Creek DMCF FCE and SCMW areas. The DRA boundary is shown as a red line with red text labels defining the limits. Starting at the gate in the

northwest corner, the DRA boundary follows the fence along Kembo Road on the northern edge of the FCE. The DRA boundary then turns south where Kembo Road meets the access road and continues to follow the fence. The DRA boundary then turns east and follows the mean high water (MHW) line around the SCMW at the base of the Cox Creek DMCF perimeter dike out to the shoreline of the Patapsco River on the eastern edge of the SCMW. The DRA boundary then follows the property line / FCE boundary along the southern and western edges of the FCE back to the northwest corner. The DRA boundary is larger than the FCE boundary to also incorporate the SCMW area.

Figure 4: Cox Creek DMCF Forest Conservation Easement and Swan Creek Mitigated Wetland Areas

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5. Hawkins Point Dredged Material Containment Facility Critical Area Tree Planting Mitigation Site

Background

The Hawkins Point DMCF is located just north of the Francis Scott Key Bridge, on the western shore of the Patapsco River in the upper Chesapeake Bay in Baltimore City, Maryland. The Hawkins Point DMCF North Cell area, located at the confluence of the Patapsco River and Curtis Bay, was at one time an active DMCF. However, dredged material had not been placed in the North Cell for approximately 20 years prior to closure of the DMCF in 2012. MDOT MPA restored the North Cell area to a natural forested buffer habitat to provide advanced mitigation to offset Critical Area Buffer and tree clearing impacts resulting from MDOT MPA development and redevelopment activities. The entire North Cell area is within the Critical Area, and it is adjacent to local Habitat Protection Areas and Waterfowl Areas. The site was planted in two phases in 2014. The 7.11-acre Phase I area was planted in Spring 2014, and the 7.39-acre Phase II area was planted in Fall 2014. In total, 3,161 trees were planted over 14.5 acres. Monitoring and replacement of dead trees was performed from 2014 to 2019. MDOT MPA is responsible for the long-term maintenance and preservation of the planting area.

Mapping

Figure 5 shows a map of the Hawkins Point DMCF Critical Area Tree Planting Mitigation Site. The DRA boundary is shown as a red line with red text labels defining the limits. Starting in the northwest corner, the DRA boundary follows the property line / shoreline on the northern and eastern edges of the site. At the southeast corner, the DRA boundary then turns west and follows the bottom of slope below the North Cell planting area. The DRA boundary then turns north and follows the property line along the western edge of the site back to the northwest corner.

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Figure 5: Hawkins Point DMCF Critical Area Tree Planting Mitigation Site



END OF ATTACHMENT 2

MDOT MPA Exhibit A4: ATTACHMENT 3

Vegetation Management Activities General Overview

This document summarizes regularly occurring activities related to vegetation and landscape management at each type of MDOT MPA facility for reference in the Critical Area MOU. Types of MDOT MPA facilities include: active marine terminals, dredged material containment facilities/placement sites, and managed restoration/habitat areas. Invasive species are defined as those listed in National Park Service / U.S. Fish and Wildlife Service (USFWS) regional guidance, or identified by the Maryland Department of Natural Resources (DNR) or the Maryland Invasive Species Council.

1. Active Marine Terminals

Description: These sites include areas of active marine terminal operations used for loading/offloading, handling, processing and storing of cargo.

Goal: Vegetation management is performed regularly to maintain turf areas, landscape beds, and stormwater management facilities; to clear vegetation hindering site security or growing on developed infrastructure; to control the growth and spread of invasive species; and at select locations, to control the growth and spread of species deemed problematic to cargo export locations.

Areas: Dundalk, Seagirt, North Locust Point, South Locust Point, Masonville and Fairfield Marine Terminals, Point Breeze, and Hawkins Point Landfill and Terminal

General Activities:

- Maintain lawn/turf and landscaped areas (mow, prune/trim, weed, fertilize, mulch, and plant trees/shrubs/groundcover in managed beds)
- Maintain stormwater management facilities and conveyance swales
- Herbicide/pesticide application
- Clear vegetation from fence lines, guard rails, buildings, utility structures, storm drain structures, access roads, parking lots, piers, embankments, berths, and railways
- Remove new trees growing in shoreline protection revetments or armor stone
- Treat/remove invasive species (chemical or physical)
- Treat/remove species identified as invasive, noxious, or problematic to cargo export locations (e.g. Australia), and as required by MDOT MPA Operations for the welfare and protection of tenants and/or cargo, or as directed by state or federal departments of agriculture
 - Current species to be controlled: *Ailanthus altissima* (tree of heaven), *Salix* spp. (willow), *Baccharis halimifolia* (groundsel tree),

- and other vines and herbaceous species with heavy airborne seeding
- Current locations to be controlled: Masonville and Fairfield Marine Terminals
- Other species or locations may be added as directed by MDOT MPA's foreign relationships

2. Dredged Material Containment Facilities / Placement Sites

Description: These sites have been constructed to receive inflow of dredged material in large containment areas surrounded by perimeter dikes.

Goal: Vegetation management is performed regularly to maintain the integrity of containment dikes and spillway structures; to clear vegetation hindering site security or growing on developed infrastructure; and to control the growth and spread of invasive species.

Areas: Cox Creek Dredged Material Containment Facility (DMCF) and upland area, Masonville DMCF, Poplar Island Placement Site and land base, Hart-Miller Island and land base

General Activities:

- Herbicide/pesticide application
- Clear vegetation from fence lines, guard rails, buildings, utility structures, storm drain structures, access roads, parking lots, piers, and embankments
- Remove new trees growing in shoreline protection revetments or armor stone
- Remove new trees growing on containment dikes
- Treat/remove invasive species (chemical or physical)

3. Managed Restoration/Habitat Areas

Description: These sites have been constructed or improved for use as environmental mitigation or restoration areas, or have converted to this use from dredged material disposal areas.

Goal: Monitoring activities and vegetation management are performed regularly to control the growth and spread of invasive species and protect constructed habitat areas. These activities may be per compliance with state or federal permits for the mitigation or restoration site. An invasive species control plan is developed for each site, identifying the invasive species and noxious weeds present, methods of control, and control schedules. Sites may include habitat areas for migratory birds or waterfowl, tidal and nontidal wetlands, marsh and beach areas. Some sites are monitored and maintained in partnership with other agencies such as DNR or USACE.

Areas: Designated areas of Cox Creek, Poplar Island, and Hart-Miller Island, and Masonville Cove

General Activities:

- Herbicide/pesticide application
- Clear vegetation from fence lines, drainage structures, access roads, and embankments
- Controlled flooding
- Controlled burns (administered by DNR Forestry Service)
- Treat/remove invasive species (chemical or physical)
- Remove other nuisance or undesirable volunteer vegetation from constructed habitat areas
 - That may compromise the success or survivability of the habitat area
 - To increase habitat value for a targeted species
 - To reduce threats from other species on a targeted species
 - As recommended by DNR or USFWS for habitat maintenance (e.g. remove volunteer tree that will shade a living shoreline area, thin vegetative cover to maintain terrapin nesting habitat, or remove volunteer tree near osprey platform that could introduce predator threats to the nest)

END OF ATTACHMENT 3