

**MEMORANDUM OF UNDERSTANDING  
BETWEEN ST. MARY'S COLLEGE OF MARYLAND AND THE CRITICAL AREA  
COMMISSION FOR CHESAPEAKE AND ATLANTIC COSTAL BAYS**

This Memorandum of Understanding (MOU) is entered into as of \_\_\_\_\_ 2011 by and between St. Mary's College of Maryland (SMCM) and the Critical Area Commission (CAC or the Commission) for the Chesapeake and Atlantic Coastal Bays.

**1 RECITALS**

WHEREAS, SMCM is an agency of the State of Maryland with land area, infrastructure, utilities, and facilities located within the Critical Area and therefore required to comply with Maryland's Critical Area Program; and

WHEREAS, SMCM must be able to restore, maintain, and construct a wide variety of SMCM facilities that may result in impact to the Critical Area;

WHEREAS, such anticipated impact requires appropriate measures to manage, offset, and mitigate for any such occurrences; and

WHEREAS, pursuant to the Annotated Code of Maryland, Natural Resources Article, § 8-1806, the Commission is responsible for implementing the State's Critical Area Protection Program for the Chesapeake and the Atlantic Coastal Bays, including the authority to regulate State agency actions resulting in development or redevelopment on State-owned lands in the Critical Area; and

WHEREAS, the Commission is responsible for ensuring that disturbance on State-owned land in the Critical Area is minimized and work performed in a manner most protective to the environment; and

WHEREAS, the Commission is authorized under COMAR 27.02.03 to grant a General Approval to State agencies for certain classes of development activities in the Critical Area;

NOW THEREFORE SMCM and the Commission hereby agree to the review procedures set forth in Exhibit A.

## **2**      **PURPOSE OF THE MOU**

The purpose of this MOU is to establish a modified project review and approval process. Under this process, certain types of projects would be reviewed internally by SMCM staff or cooperatively reviewed by SMCM staff and Commission staff as an alternative to review by the full Commission.

## **3**      **SMCM'S ROLES AND RESPONSIBILITIES**

- 3.1 On or before January 31<sup>st</sup> of each calendar year, SMCM shall provide a project report to the Commission. The project report shall include both the projects accomplished during the previous calendar year and those proposed for the upcoming calendar year. The report shall include all restoration, maintenance, and minor construction projects that are within the scope of this MOU. For such proposed projects, the report shall include detailed information, and as applicable, preliminary estimates of Critical Area impact and required management measures, offsets, or mitigation. For completed projects, the report shall include the project name, a brief description of the project, including the amount of new lot coverage if any, the area of vegetation disturbed and area and location of vegetation replacement including an explanation if vegetation replacement is off-site. If planting is deferred until a later date, the report shall state the reason for the deferral and the anticipated planting date.
- 3.2 Upon acknowledgement of receipt of the report by the Commission and in accordance with the procedures set forth in Exhibit A, SMCM shall be responsible for submitting project notification and project plans to the Commission and for implementing any measures necessary to satisfy the regulatory requirements of the Critical Area Program.
- 4.3 SMCM shall be responsible for obtaining any other approvals, authorizations, licenses, or permits from other local, State and federal agencies and for meeting any other regulatory requirements associated with restoration, maintenance and development projects covered by this MOU.

## **4**      **COMMISSION'S ROLES AND RESPONSIBILITIES**

In accordance with the procedures set forth in Exhibit A, the Commission agrees to accept the reports, notifications, and project documents and to provide a response within 15 business days.

## **5**      **TERM**

This MOU shall become effective on the date upon execution by all parties and shall remain in full force and effect for a period of five years, unless otherwise terminated in accordance with this MOU. The term of this MOU may be extended by agreement of all parties to the MOU.

## **6 ACCOUNTING AND REPORTING**

SMCM shall maintain a database of the outstanding requirements for any project where required planting associated with afforestation, reforestation, Buffer mitigation, or Buffer establishment is not implemented on the project site at the time of construction,. The database shall be updated when the planting is accomplished and the status of any outstanding planting requirements shall be reported to the Commission in the annual report. .

## **7 POINTS OF CONTACT**

All communication related to this MOU shall be directed to:

For SMCM: Charles Jackson, Associate Vice President of Planning and Facilities, St. Mary's College of Maryland, Office of Facilities, 18952 East Fisher Road, St. Mary's City, MD 20686-3001. Phone: 240-895-3077, Fax: 240-895-4409, E-mail: [ccjackson@smcm.edu](mailto:ccjackson@smcm.edu)

For the Commission: Mary Owens, Education and Conservation Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401. Phone: 410-260-3480, Fax: 410-974-5338, Email: [mowens@dnr.state.md.us](mailto:mowens@dnr.state.md.us)

## **8 TERMINATION**

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

**9 GENERAL PROVISIONS**

9.1 Exhibit A. The parties signing this MOU acknowledge and agree that Exhibit A represents the result of a joint effort by all the parties, and that Exhibit A may be amended from time to time by written agreement of all the parties to this MOU.

9.2 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 disagreement 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 the full Critical Area Commission.

**9.3**No Third Party Beneficiaries. This MOU does not and is not intended to create any rights or benefits for any third party. No third party shall have any legally enforceable rights or benefits under this MOU.

9.3 Amendments. This MOU together with the Forest Protection and Preservation MOU executed on April 11, 2006 constitute the agreement regarding project review procedures between the parties. Any amendment to either MOU must first be approved in writing by all parties signing the MOU, subject to any additional approval required by Maryland law.

9.4 Maryland Law Prevails. This MOU shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

9.5 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 of Understanding by causing the same to be signed on the day and year first above written.

WITNESS

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

\_\_\_\_\_

By: \_\_\_\_\_  
Margaret McHale, Chair

WITNESS

**ST. MARY'S COLLEGE OF MARYLAND**

\_\_\_\_\_

By: \_\_\_\_\_

Thomas J. Botzman, Ph.D.  
Vice President for Business and Finance

**APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY**

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Assistant Attorney General  
for the Department of Natural Resources

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Sara Slaff  
Assistant Attorney General  
For St. Mary's College of Maryland

**EXHIBIT A**  
**Conditions for General Approval of St. Mary's College Projects**  
**at the St. Mary's College Campus**

Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the Commission may grant General Approval to State agencies for programs, activities, and classes of development on State-owned lands in the Critical Area. Granting of a general approval by the Commission allows implementation of the approved program, activity or projects in accordance with the policies and requirements as set forth in COMAR 27.02.05, and in accordance with the requirements of COMAR 27.02.05.02 F.

For purposes of this General Approval, permitted activities in the Critical Area are divided into three classes: Restoration Activities, Maintenance Projects, and Minor Projects.

**Class I. Restoration Activities.**

Restoration activities are those in which the goal of the project is to restore a natural environment or a function of a natural environment. These qualify as restoration projects for general approval by the Commission, and must meet only conditions #1 and #2 under the General Conditions of this agreement. Because the focus of these projects is returning a site to a naturalized state, mitigation for impacts to the Buffer and pollutant removal calculations for stormwater are not required. Class I projects requires notification to Commission staff annually. The following activities are included:

- Beach maintenance, clean-up or replenishment
- Removal of hazardous trees (defined as dead, diseased or dying trees that are in danger of causing injury to people, damage to property or accelerating shoreline erosion)
- Tree planting
- Invasive species management, including phragmites control

- Removal of debris

### **Class II. Maintenance Projects:**

These projects involve routine activities or maintenance tasks with no perceived environmental impact. All activities must meet the conditions set forth under the General Conditions and Class II Conditions of this agreement. Class II projects require notification to Commission staff prior to initiating the activity.

- a) For the following activities, pollutant removal calculations for stormwater are not required. Project types include installation or the repair, modification, or replacement of the following service oriented equipment and facilities by St. Mary's College of Maryland on the campus grounds:
  - Signs;
  - Fencing;
  - Landscape planting and landscape maintenance for existing facilities and/or to fulfill objectives of beautification programs;
  - Trail maintenance, including minor filling or rerouting;
  - Footbridge, pier, boardwalk or stair redecking;
  - Canoe, kayak, or boat launches, with less than 250 square feet of new lot coverage in the Buffer.
  
- b) For the following maintenance or facility renovation activities, pollutant removal calculations for stormwater are not required. The project may not result in a net increase in lot coverage greater than 250 square feet; however, the project area may involve up to 2,500 square feet of disturbance. Projects must be reported as a whole and may not be split in to smaller projects to meet this threshold. *Maintenance is defined as an activity which is required to conserve as nearly, and as long as possible, the original condition of an asset or resource while compensating for normal wear and tear.*
  - Minor rehabilitation of bridges, piers, and boardwalks, including repair of culverts and headwalls;
  - Maintenance of trails, roadways, intersections, parking lots, sidewalks, bicycle facilities or other surfaces that does not involve resurfacing or re-grading of more than 10% of the total area of the facility;
  - Maintenance, repair or renovation of existing stormwater management facilities (does not involve any change in area or capacity);
  - Drainage improvements, related to safety, flood control or erosion, including the replacement of existing riprap slope protection, revetment repair, grout bags, pneumatically applied mortar or lining mortar;
  - Repair of existing utilities, including electric lines, sewer lines, water lines, telephone lines, marine fuel lines and fiber-optic cables;
  - Maintenance of water-dependent facilities that does not involve resurfacing or re-grading of more than 10% of the total facility.

### **Class III. Minor Projects.**

This class includes maintenance projects which exceed the thresholds of Class II projects as well as new minor construction projects. The project may result in net increases in lot coverage. The

limit of disturbance for minor projects is less than 5,000 square feet. If required, stormwater management measures must be sufficient to achieve a ten percent reduction in pollutant loadings below existing levels. All activities must meet the conditions set forth under the General Conditions and Class III Conditions of this agreement. Class III projects must be individually submitted to Commission staff for concurrence as a minor project. Comments from Commission staff must be received and addressed before the activity is commenced.

- a) These are maintenance activities of existing facilities with a net increase in lot coverage or a limit of disturbance less than 2,500 square feet and/or projects that involve resurfacing or grading more than 10% of the facility up to 2,500 square feet. The projects that involve new lot coverage shall not exceed 1,000 square feet of new lot coverage in the Buffer or expanded Buffer. Pollutant removal calculations and compliance are required as described in the Class III Conditions. Existing facilities include:
- Water-dependent facilities;
  - Trails, roadways, intersections, parking lots, sidewalks, accessibility ramps, bicycle facilities or other surfaces;
  - Structures;
  - Shoreline erosion control measures including sills, groins, revetments and living shorelines;
  - Utilities including electric lines, sewer lines, water lines, telephone lines, marine fuel lines and fiber-optic cables;
- (b) These are new activities or maintenance activities of existing facilities that exceed all other thresholds. Net new lot coverage and/or resurfacing/grading may not exceed 5,000 square feet. The projects that involve new lot coverage shall not exceed 1,000 square feet of new lot coverage in the Buffer or expanded Buffer. Pollutant removal calculations and compliance are required as described in Class III Conditions. Facilities and activities include:
- Water-dependent facilities;
  - Trails, roadways, intersections, parking lots, sidewalks, accessibility ramps, bicycle facilities or other surfaces;
  - Structures;
  - Shoreline erosion control measures including bulkheads, revetment and soft shoreline methods;
  - Utilities including electric lines, sewer lines, water lines, telephone lines, marine fuel lines and fiber-optic cables;

In addition to satisfying all requirements as set forth in COMAR 27.02.05, any projects proposed for General Approval must also meet the following conditions:

#### **A. General Conditions**

1. All projects shall fulfill all applicable federal and State permitting requirements. Exemptions, variances, and waivers granted by other agencies are separate from the requirements of the Critical Area law and criteria and shall not be considered to lessen or alter the requirements of this General Approval.

2. St. Mary's College of Maryland will report Class I projects to the Commission on an annual basis. The annual report will provide the following information as appropriate:
  - Project description including amount of new lot coverage if any
  - Project location map
  - Area of vegetation disturbed and area and location of vegetation replacement including an explanation if vegetation replacement is off-site
  - If planting is deferred until a later date, the reason for the deferral and the anticipated planting date.
  
3. St. Mary's College of Maryland will forward notification of Class II projects to the Commission at least 60 days prior to starting work. The notification will include the following information as appropriate:
  - Project descriptions including amount of new lot coverage
  - Project location map
  - Area of Buffer disturbed and proposed mitigation
  - Area of vegetation disturbed and area and location of vegetation replacement including an explanation if vegetation replacement is off-site
  
4. St. Mary's College of Maryland will forward Class III projects to the Commission staff for review and concurrence that the project meets the qualifications of a General Approval at the 90% completion stage of the architectural and engineering design work, but not less than 60 days prior to starting work. The Commission staff shall reply within 15 business days of receipt and may concur, request more information, or inform St. Mary's College staff that the project does not meet the conditions of the General Approval and will require approval by the Commission under COMAR 27.02.05.
  
5. St. Mary's College of Maryland will ensure that all projects meet the following conditions:
  - a) All vegetation removed will be replaced on a one-to-one basis or a three-to-one basis as specified in the MOU – Forest Protection and Preservation Agreement dated April 11, 2006 (Forest MOU). Replacement plantings shall consist of native species.
  - b) No Habitat Protection Areas, other than the 100-foot Buffer, shall be adversely affected by the project. Habitat Protection Areas include (1) non-tidal wetlands; (2) threatened and endangered species and species in need of conservation; (3) plant and wildlife habitat including colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests, forest interior dwelling species habitat, and Natural Heritage Areas; and (4) anadromous fish propagation waters.

- c) Any disturbance of the Buffer from activities or development by St. Mary's College of Maryland shall be minimized (i.e. no vegetation shall be removed from the Buffer except that required by the proposed activity or development).
- d) Any disturbance to or construction within the Buffer or expanded Buffer from Class II projects shall be mitigated as described here. Class III projects will be mitigated as described below in "Additional Conditions for Class III Minor Projects." All mitigation plantings shall be species that are native to the Coastal Plain of Maryland. St. Mary's College of Maryland shall include mitigation information as a component of the project notification.
  - i.) Except for shoreline access or water-dependent facilities, Class II projects shall be mitigated by planting an area equivalent to three times the area of total new lot coverage (three-to-one). This shall be in addition to any mitigation for removal of natural vegetation in the Buffer as specified in the Forest MOU.
  - ii.) Class II projects involving water-dependent facilities or access to the shoreline shall be mitigated at a ratio of two-to-one for the area of total new lot coverage. This shall be in addition to any mitigation for removal of natural vegetation in the Buffer as specified in the Forest MOU.
  - iii.) Mitigation shall conform with the planting standards in COMAR 27.02.05.09-2K and L.
- e) Mitigation for Buffer disturbance shall occur on the following priority basis:
  - a. On-site within the Buffer;
  - b. On-site and adjacent to the Buffer; or
  - c. On-site elsewhere in the Critical Area.
- f) The extent of any construction site or area disturbed shall be required to utilize sediment and erosion control practices.

**B. Additional Conditions for Class III. Minor Projects**

1. The project must meet all conditions contained in the General Conditions section of this Agreement.
2. A project report summarizing the project and its impacts shall be submitted to the Regional Program Chief contact and include the following information, as listed below.
  - Project description;
  - Site plan showing the location of the development activity, and the location of the 100-foot Buffer and expanded Buffer;
  - Amount of existing and new lot coverage;

- Area of disturbance;
  - Compliance with the pollutant reduction requirement for stormwater, including pollutant reduction calculations as necessary;
  - Compliance with the Buffer establishment requirements as necessary;
  - Compliance with the Forest MOU as necessary;
  - A Buffer Management Plan as necessary.
3. For projects that involve disturbance to the Buffer, SMCM will provide evidence that the project meets the criteria described in COMAR 27.02.06.01.B. Projects will be identified in their entirety. Projects cannot be separated into component parts in order to qualify parts of a larger project as a “minor project”.
  4. Minor projects on lands that include a Buffer shall meet the requirements for establishment, mitigation, and the preparation and implementation of a Buffer Management Plan as described in the provisions of the Code of Maryland Regulations.
  5. Class III(a) projects that result in net new lot coverage or involve resurfacing/regrading may meet the pollutant reduction requirement for stormwater by providing one 1” caliper tree for every 100 square feet of redeveloped surface in lieu of a stormwater best management practice. Trees shall be species that are native to the Coastal Plain of Maryland.
  6. Class III(b) projects shall meet the pollutant reduction requirements for stormwater in accordance with the Critical Area Commission’s current guidance manual for stormwater.

**C. Other Minor Projects:**

Other minor projects may qualify for general approval. These will be determined on a case-by-case basis through discussion and administrative review by staff at St. Mary’s College of Maryland and the Commission.