

Critical Area Commission

STAFF REPORT

February 26, 2025

APPLICANT:	Washington Suburban Sanitation Commission
PROPOSAL:	Memorandum of Understanding for General Approval
COMMISSION ACTION:	Vote
STAFF RECOMMENDATION:	Approval
STAFF:	Annie Sekerak
APPLICABLE REGULATIONS:	COMAR 27.02.03 General Approval of State and Local Agency Programs Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions

DISCUSSION:

Staff from the Critical Area Commission and the Washington Suburban Sanitation Commission (WSSC) have worked together to update the existing General Approval Memorandum of Understanding (MOU) between WSSC and the Critical Area Commission. The draft MOU was presented to the Project Committee in February 2024 for preliminary review and WSSC is now requesting final Critical Area Commission approval.

Commission staff recommend approval of the updated MOU between WSSC and the Commission. A copy of the draft MOU and associated Exhibit A1 are attached to this staff report.

Purpose and Need

An existing MOU between the Critical Area Commission and WSSC was signed in 2003. Activities allowed under the MOU were limited to pipeline and facility maintenance activities, emergency situations, and other minor pipeline projects with minimal disturbance limits and no allowance for impacts to any Habitat Protection Area (HPA), including the Buffer.

Based on the disturbance limits and prohibition of impacts to the Buffer, both WSSC and Commission staff determined that an updated MOU would expedite the review of several additional types of minor maintenance activities. These proposed additions are similar in nature to minor activities that have been included in similar MOUs that the Commission has with other State Agencies.

Authority to Establish MOUs

Under Natural Resource Article §8-1801 and COMAR 27.02, the Critical Area Commission is required to approve any action by a State¹ agency which results in development in the Critical Area on State-owned land, private lands, or lands owned by local jurisdictions. COMAR 27.02.03 specifically gives the Commission the ability to enter into a General Approval with State agencies to seek approval for programs or classes of activities that result in minor development in the Critical Area. This General Approval authority has commonly been implemented using MOUs between the Commission and State Agencies. The purpose of these agreements is to streamline review activities while ensuring all Critical Area development provisions are met.

Per COMAR 27.02.03, the General Approval must include a description of the program or class of activities; an assessment of the extent to which development resulting from the program or class of activities will be consistent with the criteria in COMAR 27.01; and a proposed process by which the program or class of activities could be conducted as to conform with the requirements of COMAR 27.01.

Proposed Updates to the WSSC MOU

The goal for the updated MOU is to streamline the existing process for Critical Area Commission review of WSSC projects. In particular, the proposed updates to the MOU are intended to more closely match the approved project types and development thresholds that the Critical Area Commission previously approved for the Maryland Department of Transportation's (MDOT) MOU exhibits for the State Highway Administration (SHA) and the Maryland Transit Administration (MTA) as well as the Maryland Transportation Authority's (MDTA) MOU. To that end, the update to the existing Exhibit encompasses additional minor projects types and specifies procedures for future MOU updates. In addition, the update includes thresholds for qualifying projects that match those found in the aforementioned MOUs.

Notable updates include:

- Establishment of a process used by both parties for approval by the Critical Area Commission for WSSC projects in the Critical Area; the types of projects eligible under the MOU; and the responsibilities of both parties;
- Separation of projects into two general categories under Exhibit A:
 - Category I – maintenance activities for existing facilities, landscape projects, stormwater management projects, or minor improvements to existing facilities.
 - Category II – development activities that are either minor in size and/or scope;
- Reporting requirements for each project category;
- Mitigation requirements for each project category;
- An update regarding the review of emergency actions that are required to be performed

¹ WSSC is considered a quasi-state agency and is subject to the Critical Area's regulations regarding development by State agencies.

by WSSC;

- Language to address decommissioning of structures in the Critical Area, which was a topic of conversation between the Commission and WSSC for previous WSSC project submissions;
- A Technical Process Guidance Document that includes key definitions, submittal requirements, justification requirements, points of contact, and guidance on mitigation, Buffer delineations, and wetland delineations; and
- An acknowledgement from WSSC to identify, and where feasible incorporate, climate resilient practices to avoid or minimize environmental and structural damage associated with a coastal hazard, extreme weather event, sea level rise, or other coastal impacts.

Below is a more detailed summary of updates.

Proposed Exhibit A1: Updated Structure with Additional Project Types

Exhibit A1 details the specific projects that can be reviewed under the MOU, the thresholds for disturbance/impacts for projects that could qualify under the MOU, and the necessary mitigation. With this update, Commission staff worked with WSSC to add a number of project types to the list of activities that may be approved under the MOU Exhibit. The amended Exhibit is organized into two separate categories: Category I: Limited Reporting Activities, and Category II: Development Activities that are Minor in Either Size and/or Scope.

Category I Project Types

Category I projects are considered routine in nature and are frequently required to maintain or improve the life expectancy of existing facilities, roads, and stormwater management practices. Category I projects also include landscaping and environmental restoration. These projects are reported annually to Commission staff on September 1st of each year, when the project involves tree clearing. If a Category I project does not result in tree removal, the annual reporting of the project is not required. However, WSSC staff maintains a tracking sheet of all activities that meet the parameters of Category I, including activities that do not involve any tree clearing. Category I projects include:

- Beneficial and non-development related projects, such as landscape plantings, invasive species removal, and soil borings;
- Structural and facility maintenance, such as interior/exterior renovations with no ground disturbance;
- Stormwater management projects, such as pavement removal or outfall stabilization;
- Utility maintenance, such as replacement of electric or sewer lines;
- Slope stabilization, drainage maintenance and dam embankments; and
- Access roads.

Category II Project Types

Projects that qualify under Category II can include new development and redevelopment of existing facilities that are minor in size and/or scope. Activities that meet the qualifying parameters of Category II (discussed below) must be submitted to Commission staff for review and approval under this Exhibit. Category II projects include:

- Category I projects that do not meet the clearing limit of five trees or less;
- Structural and facility expansion projects, such as expansion of a building;
- Shore erosion control;
- Drainage improvements, such as new storm drain outfalls;
- Utilities, such as installation of new utility lines;
- Stormwater management, such as facility maintenance/retrofit and green infrastructure practices; and
- Special projects.

Project types listed under Special Projects include nonstructural/restoration projects (i.e. stream restorations), multi-use paths, new pipelines, and solar system installations. Each Special Project has its own set of parameters and thresholds. These project types are unique to WSSC property and may require different threshold limits and mitigation as compared to other project types under Category II. This section matches the Special Projects section found in the MDTA MOU, except that the pipeline and Cured in Place (CIPP) lining is new and specific only to the WSSC MOU.

Category II Thresholds under Qualifying Parameters

In order for a project to be reviewed under the MOU, the project must meet prescribed thresholds and parameters that include:

- No impacts are allowed to Habitat Protection Areas (HPA) other than the Critical Area Buffer, unless the impact is minor in scope.
- New nonwater-dependent activities and facilities must be located outside of the Buffer.
- Climate resilient practices will be incorporated where feasible in accordance with the Critical Area Commission's regulations.²
- Forest and developed woodland clearing is limited to 20,000 square feet for linear projects and 5,000 square feet for non-linear projects.
- Limits of disturbance (LOD) are confined to 5,000 square feet for non-linear projects.
- New buildings and structures are limited to a 1,200-square-foot footprint.
- Shore erosion control projects are limited to 500 linear feet in length.

The thresholds/limits listed within the Exhibit may be exceeded by minor amounts if WSSC provides justification, similar to how other approved MOUs are constructed. However, if a project does not meet the prescribed parameters, including minor exceedance under justification, the project will require full Critical Area Commission approval. Additionally, Commission staff reserve the right to elevate a project to the full Commission review at any time during the review process.

Category II Mitigation and Stormwater Management

The updated MOU Exhibit provides mitigation requirements for various impact types within the Critical Area. The breakdown of the mitigation requirements can be found on page 11 of the

² COMAR 27.02.05.02.A(1)

Exhibit. The required mitigation matches the previously approved update to the MDTA MOU, which was reviewed by the Critical Area Commission in November 2023.

Meeting with the Project Committee February 2024

This draft MOU was presented to the Project Committee on February 7, 2024, for preliminary review and feedback regarding the general outline and parameters, with particular focus on the proposed decommissioning language. Based on the discussion during the meeting and to satisfy the Committee's previous concerns, Commission staff added the following clauses to the MOU (see pages 1 and 2 of the attachment):

- WHEREAS, in an effort to minimize the adverse effects of human activities on water quality and natural habitats, WSSC will locate development outside of the Critical Area to the maximum extent practicable; and
- WHEREAS, WSSC shall first consider the reuse of decommissioned sites in the Critical Area before proposing new development elsewhere, as applicable.

WSSC staff and legal counsel have reviewed the new clauses and have no concerns, and since the previous Project Committee meeting, no other significant changes have been made to the draft MOU.

STAFF RECOMMENDATION

Critical Area Staff recommend approval of the WSSC Memorandum of Understanding and Exhibit A1 as proposed.

ATTACHMENTS

Draft WSSC MOU and Exhibit A1

MEMORANDUM OF UNDERSTANDING

AUTHORITY: Natural Resources Article 8-1814, Annotated Code of Maryland; COMAR 27.02.05, etc.; and Annotated Code of Maryland, Public Utilities Article.

This Memorandum of Understanding (MOU) is entered into on this _ day of ____ by and between the WASHINGTON SUBURBAN SANITATION COMMISSION (“WSSC”) and the CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (the “Commission”).

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; and

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 27.02.05.02.B.

WHEREAS, WSSC is vested the authority under Annotated Code of Maryland, Public Utilities Article, to provide sanitary sewage and water supply service within the Washington Suburban Sanitary District and is therefore responsible for constructing, managing, operating and improving water and sewer infrastructure located in the Critical Area in Prince George’s County;

WHEREAS, WSSC recognizes the authority of the Commission’s criteria under COMAR 27.02.05;

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

WHEREAS, WSSC and the Commission have recognized the need to revise and replace that 2003 MOU with this new 2025 MOU to ensure that the interaction between the Parties related to Critical Area development activities, procedures, and approvals are up-to-date, efficient, and expanded;

WHEREAS, in an effort to minimize the adverse effects of human activities on water quality and natural habitats, WSSC will locate development outside of the Critical Area to the maximum extent practicable;

WHEREAS, WSSC shall first consider the reuse of decommissioned sites in the Critical Area before proposing new development elsewhere, as applicable; and

WHEREAS, when the siting of projects must be in the Critical Area, WSSC will ensure that any development activity is performed in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries and provides 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 OF AND BACKGROUND FOR THIS MOU

1.1 The purpose of this MOU is to clarify the terms and procedures by which WSSC will conduct development activities in the Critical Area 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 addresses the following items:

1.1.1 The process to be used by the Parties for WSSC to gain General Approval by the Commission for projects in the Critical Area that are either maintenance activities or activities that are minor in size and/or scope; and

1.1.2 The responsibilities of the Parties with regard to such General Approvals.

2 GENERAL APPROVALS

The Commission agrees to grant General Approval to WSSC for certain classes of development, pursuant to COMAR 27.02.05. The condition for general approval is attached hereto, and incorporated herein by reference, as Exhibit A1. When a project by another entity (such as a local jurisdiction) is proposed on WSSC land, this MOU may apply and WSSC 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

WSSC shall submit to Commission staff projects that qualify under Category II of this MOU on a case-by-case basis as more fully defined under Exhibit A1. Attachment 1 outlines the required information that must be included as part of a complete application. 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 either the Commission Chair or the Executive Director of the Commission) as required in Section 2.3 of Exhibit A, or whether the project will be required to be presented to the full Critical Area Commission for review and approval.

3.1 For any development project that exceeds the strict terms of this MOU, WSSC shall provide a written justification requesting review of the project under Category II that explains

why the development project fits under this MOU despite exceeding disturbance, size, or Buffer encroachment thresholds by minor amounts. The written justification must specifically address why the proposed project cannot meet Category II thresholds as more fully defined under Exhibit A. The Commission Chair or the Executive Director of the Commission, along with Commission staff, will review justification projects to determine if they can be approved under this section. Commission staff will notify WSSC of this decision.

3.2 WSSC shall immediately 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, or run-off to the Chesapeake or the Atlantic Coastal Bays or their tributaries. WSSC shall afford Commission staff the opportunity to review any such changes and make recommendations based on an assessment of the extent to which the project conforms with COMAR 27.02.05.

3.3 The Commission shall notify WSSC and its Department 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. WSSC shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until the problem is resolved.

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

3.5 When conducting development activities in the Critical Area, WSSC shall ensure that the activities comply with all applicable federal, State and local requirements.

3.6 When conducting development activities in the Critical Area, WSSC shall notify the Commission if it is or becomes aware of controlled hazardous substances or chemical contamination of soil or water and WSSC shall adhere to State water quality standards.

4 REPORTING

4.1 On September 1st of each year, WSSC shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this MOU that require the removal of trees as more fully defined under Exhibit A. This report shall include for each project:

- Project's name;
- Project's location;
- Proposed amount of clearing; and
- Mitigation calculations and the location of plantings.

4.2 By September 1st of each year, WSSC shall provide the Chair of the Commission with a report containing those projects that qualify under Category II of this MOU using the justification option outlined in Section 2.3. The report shall list the following information:

- Location of the project;
- Site Plan;
- A summary of proposed impacts;
- A copy of the justification submittal; and
- A copy of Commission staff's approval letter.

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.

5 MITIGATION

5.1 The Parties agree that WSSC shall provide onsite mitigation to offset development impacts in accordance with the ratios outlined in Exhibit A1.

6 PUBLIC SAFETY

Certain emergency situations and hazardous conditions jeopardizing public safety and welfare may require WSSC to take emergency action in the form of development in the Critical Area. WSSC may undertake the necessary remedial actions without prior Commission approval; however, WSSC shall notify the Commission of the development activities as soon as possible and shall obtain Commission recommendations for any necessary actions to ensure compliance with the Commission's project approval. ALL SPILLS OF TOXIC SUBSTANCES WILL BE REPORTED TO THE CRITICAL AREA COMMISSION ON THE NEXT BUSINESS DAY.

7 DECOMMISSIONING

WSSC acknowledges that, from time to time, structures in the Critical Area will be abandoned as replacement structures or facilities are built to provide reliable sanitary sewage and water supply service within the Washington Suburban Sanitary District. These abandoned structures will remain in place until their location is needed for future WSSC projects and will be properly secured to protect the health of humans, animals, and the natural environment. At the time of decommissioning of these structures, WSSC will ensure that environmental impacts associated with harmful substances such as asbestos will be minimized during the removal of these structures. WSSC shall adhere to all applicable laws and requirements during the decommissioning process.

8 POINTS OF CONTACT

The points of contact for written communication between the Parties are:

For WSSC :

To Be Determined

For the Commission:

Kate Charbonneau
Executive Director
Critical Area Commission
1804 West Street, Suite 100
Annapolis, MD 21401

9 TERM

This MOU shall become effective on the date on which the last party signs 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.

10 GENERAL PROVISIONS

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

10.2 **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.

10.3 **AGENCIES HELD HARMLESS:** Recognizing that WSSC is a quasi-government agency and, as such, is subject to limitations on the indemnity that it can legally provide, WSSC 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 WSSC or any subcontractor to WSSC, or the subcontractor's employees, agents, or representatives. If applicable, the provisions of the Local Government Tort Claims Act (Annotated Code of Maryland, Courts and Judicial Proceedings, Title 5) shall apply to liability or indemnification under this paragraph. This is not to be deemed as a waiver of those provisions or any immunity which may exist in any action.

10.4 **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.

10.5 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.

10.6 AMENDMENTS TO EXHIBIT A1: The Parties acknowledge and agree that Exhibit A is the result of a joint effort by the Parties. Because Exhibit A1 may evolve with gained experience during implementation of the MOU, the Parties agree that Exhibit A1 may be amended periodically with the written consent of the Points of Contact for each Party listed above in Section 6. The Commission Chair will update the Commission of any amendments or modifications to Exhibit A1 at the next meeting following the agreed-upon amendments or modifications.

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

10.8 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.

10.9 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.

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

WITNESS

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

By: _____
Erik N. Fisher, Chair

WITNESS

WASHINGTON SUBURBAN SANITATION COMMISSION

By: _____
Kishia L. Powell, General Manager/CEO

**APPROVED AS TO FORM AND
SUFFICIENCY:**

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

Assistant Attorney General
Critical Area Commission

James R. O'Day, Associate General Counsel II
Washington Suburban Sanitation Commission

EXHIBIT A1: Washington Suburban Sanitary Commission

1.0 Conditions for General Approval of Washington Suburban Sanitation Commission (WSSC) 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 the project Category as defined below.

WSSC will identify, and where feasible incorporate, climate resilient practices 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). As Coast Smart siting and design guidelines are developed there will be additional measures taken to ensure avoidance and minimization of impacts to the infrastructure in vulnerable locations.

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

2.0 Category I: Limited Reporting Activities

The purpose of Category I is to allow maintenance activities for existing facilities, landscape projects, stormwater management projects, or minor improvements to existing facilities. Projects that qualify under Category I do not require Critical Area 10% stormwater management or a climate resiliency assessment. On September 1st of each year, WSSC shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit that require the 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 having at least a 1-inch diameter at breast height (DBH) are removed, there are no permanent 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.

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

BENEFICIAL AND NON-DEVELOPMENT RELATED PROJECTS

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

MAINTENANCE AND REHABILITATION PROJECTS

- Repair, modification, installation, and/ or replacement of:
 - Manholes
 - Valves
 - Fire Hydrants
 - Hose connections
 - Fencing
- Installation or repair of manholes, valves, fire hydrants, trenchless-slip lining or other sewer or water appurtenances.
- Rehabilitation projects associated with repair or in-kind replacement of leaking water or sewer lines.
- Work related to the normal maintenance of right-of-way, including repair of damaged rip rap.

STRUCTURAL AND FACILITY PROJECTS

- 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.
- Maintenance activities of existing facilities with net increase in lot coverage no greater than 1,000 sf and/or projects that involve up to 2,500 sf of total limit of disturbance (LOD).
- Projects involving new lot coverage shall not exceed new lot coverage of 1,000 sf in the Buffer or Expanded Buffer and may not encroach into the Buffer closer than existing lot coverage
- New structures or facilities may not exceed 2,000 sf and the total LOD may not exceed 5,000 sf.
- New non-water dependent structures are not permitted in the Buffer or expanded Buffer, unless otherwise permitted under special provisions.
- Any facility repair, maintenance, or rehabilitation project that does not cause permanent ground disturbance, increase impervious surface, increase stormwater runoff, impact Habitat Protection Areas (HPAs) or does not require a LOD of more than 10,000 square feet, including:

- Modification, renovation, demolition of existing buildings or stationary equipment (pump stations, treatment plants, storage tanks).
- Standard operations of wastewater treatment or pump station facilities.

STORMWATER MANAGEMENT PROJECTS

- Pavement removal with stabilization, including areas within the Critical Area Buffer
- Construction of new stormwater management (SWM) facilities within WSSC 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.

SLOPE STABILIZATION, DRAINAGE MAINTENANCE, DAM EMBANKMENTS (INCLUDING STORMWATER FACILITIES)

Drainage and Stabilization Improvements

- Removal of trees from dam embankments for dam safety purposes (no limit to the number of trees removed)
- Existing slope protection
- New slope stabilization and repair of existing stabilization
- Ditch or swale restoration to original authorized condition (debris, sediment, and associated vegetation removal)
- Removal of debris from streams, consistent with MDE Waterway Construction Permit
- Stabilization and/or cleanup of existing outfall pipes, structures, and facilities including removal of sediment and debris

Culverts and Conveyances (culverts, pipes, etc.)

- Repair, replacement, extension, installation, or removal of:
 - grout bags
 - rip rap
 - headwalls and end sections
 - manholes and inlets
 - parapets and railings
 - swingwalls
 - spalling
 - joints
 - debris
 - erosion and sediment control
 - culvert
 - sediment
- Installation of trenchless rehabilitation methodology (Cured-in-Place-Pipe (CIPP) lining, etc.) where any incidental impact for access is temporary and the disturbed area is revegetated

ACCESS ROADS

- New access roads outside of the Buffer constructed using pervious construction methods, and limited in width to no more than 15 ft.
- Replacement, patching, resurfacing, and/or milling of existing access roads

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 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 and Expanded Buffers, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) WSSC 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 water-dependent facilities (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. WSSC will identify, and where feasible incorporate, climate resilient practices 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 and stormwater management practices. 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 - 500 linear feet.

3.1.8. For non-linear projects, new lot coverage may not encroach into the Buffer closer than existing lot coverage, unless WSSC 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 WSSC 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. WSSC 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 a 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 its original condition;
- All work will be completed within WSSC property or right-of-way;
- 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; or
- The purpose of the project is to address safety concerns or emergency repairs.

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 September 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 WSSC 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 pump stations, treatment plants, and storage tanks.

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

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

- New utility lines are to serve existing facilities only. Utility lines associated with new development must be reviewed with the new development.
- Replacement of utilities
- Replacement of pipelines
- Directional boring associated with utility repair/replacement
- Repair of existing appurtenances (valves, hydrants, manholes)
- Protection of exposed existing pipelines and appurtenances (valves, hydrants, manholes)

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.
 - 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. WSSC may propose additional project types to be added to the eligible special project list below. Upon concurrence by Commission staff, the Chair will update the Commission at the next Commission meeting of any addition and update this MOU accordingly.

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 Public Pathways (10% required)

- No threshold for limit of disturbance or clearing
- 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.
- Pathways are designed in accordance with the Commission's Public Pathways Document

Installation of new pipelines and Cured in Place lining (CIPP) (10% not required)

- No threshold for LOD
- No threshold for tree clearing
- Impacts permitted in the Buffer and Expanded Buffer
- For projects over 20,000 sf of disturbance, project proposal shall include a written justification outlining how design meets required use and how impacts to the Buffer, Expanded Buffer, and forest have minimized to the maximum extent possible.
- Mitigation is required at 1:1 ratio for clearing based on the areal extent of the canopy of forest or developed woodland.

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.

Application Submittal Requirements

At a minimum, a project proposal summarizing the project and its impacts shall be submitted to Critical Area Commission staff and shall include the following information:

- Project description and details;
- Site plan(s) showing existing and proposed conditions, including the following features:
 - Critical Area Boundary (including acreage and designation);
 - 100-foot and/or Expanded Buffer;
 - Limits of Disturbance (LOD);
 - Forest and Developed Woodland Clearing;
 - Existing and New Lot Coverage;
 - Existing and New Lot Coverage in Buffer;
 - Topography;
 - Soil Type;
- If applicable, 10% stormwater management (SWM) calculations, associated drainage map, and site plan showing the location of proposed SWM best management practices;
- A Buffer Management Plan that shows the limits of the delineated Buffer and expanded Buffer, the proposed impacts and/or tree removal in the Buffer, and the quantity, species, and location of the mitigation plantings, if applicable;
- Agency Letters (as updated every two years): Department of Natural Resources (DNR) Wildlife and Heritage Service, U.S. Fish and Wildlife Service, and MHT;
- Climate resiliency assessment; and
- If required to comply with Coast Smart Construction criteria, include at least one of the following:

- Project Screening Form
- Explanation of Categorical Exemption
- Construction Waiver Approval Letter

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 September 1st of each year, WSSC 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. WSSC 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 WSSC 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, WSSC 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 WSSC 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. WSSC 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.

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

Point of Contacts

WSSC 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, WSSC will establish a Project Manager to whom Commission staff shall direct all questions. Full delivery projects may not be on WSSC land, so would be reviewed by Commission staff based on who owns the land, through the local jurisdiction.

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