

Critical Area Commission
STAFF REPORT

April 17, 2024

APPLICANT: Queen Anne’s County

PROPOSAL: Mitigation Banking Memorandum of Understanding

JURISDICTION: Queen Anne’s County

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Susan Makhoulf

APPLICABLE LAW/ REGULATIONS: Natural Resources Article § 8-1808 and COMAR 27.01.02

DISCUSSION

Queen Anne’s County is seeking approval of a Mitigation Banking Memorandum of Understanding (MOU) between the county and the Critical Area Commission (Commission). The MOU will allow for the establishment of mitigation banks (MBs), reviewed and approved by Critical Area staff, as an acceptable option for addressing unavoidable impacts to the Critical Area for development projects when onsite practices are not feasible.

MOU Purpose and Need

Development projects in the Critical Area may require forest and developed woodland mitigation, Buffer mitigation, or phosphorus reduction by at least 10 percent. Mitigation must be met onsite; however, local jurisdictions may also collect fee-in-lieu monies when it cannot be met onsite¹. Those fees can then be spent by the County on appropriate planting or other offset programs. In addition to the possibility of collecting FIL on private development projects, from time to time the County itself is required to provide mitigation for their own development activities which at times cannot be accommodated onsite.

In accordance with these provisions of COMAR, the purpose of the Mitigation Banking MOU is to:

1. Create mitigation banks on parcels/lots already identified by the County;
2. Utilize existing fee-in-lieu (FIL) funds on these sites to address past Critical Area mitigation obligations for private projects;
3. Fulfill existing County Critical Area mitigation obligations; and

¹ See COMAR 27.01.02.04(C)(4), COMAR 27.01.09.01-5, and the Critical Area 10% Rule Guidance Manual.

4. Outline a process to identify and approve additional MBs to address future mitigation obligations.

The MOU is a legal agreement between Queen Anne’s County and the Commission and includes each party’s roles and responsibilities. It includes a site analysis process to identify suitable Critical Area mitigation banking sites and a credit approval process to assess, track, and release credits for approved MBs. The draft MOU, including attachments, is attached to this memo. A summary of each of the individual sections in Exhibits A and B, including attachments, is provided in the attached memo that was presented to the Project Subcommittee on March 6, 2024.

As of the date of this memo, the County has the following FIL balances for Critical Area impacts resulting from private development projects:

- Buffer disturbance: \$45,544
- Non-Buffer forest clearing: \$88,112
- 10% Critical Area stormwater management \$10,830

In addition, the County has the following outstanding mitigation obligations for Critical Area impacts resulting from County projects:

- Forest clearing (outside the Buffer) 131 trees plus 0.68 acres
- 10% Critical Area stormwater management 0.18 pounds Phosphorus per year

March 6th Project Subcommittee Discussion

A draft of the MOU was presented for discussion only at the March 6, 2024, Project Subcommittee meeting. County staff attended the meeting and responded to questions from the Chair and Commissioners regarding the MOU. At the conclusion of this meeting, the Project Subcommittee made the following specific requests to amend the draft MOU:

1. Include within the MOU a process to ensure MBs will be inspected/monitored in perpetuity;
2. Ensure that MBs will be permanently protected and that uses will be limited to passive recreation; and
3. Consider equity when reviewing the geographic location of proposed MBs.

County and Commission staff worked together to address the Project Committee’s questions/concerns and the MOU was edited accordingly. The attached version of the MOU includes the proposed edits, which are shown in red text and can be found on the following pages:

1. **Page 9, Exhibit A, Section II. Establishment of Mitigation Banks:** Additional factors are added to consider when siting MBs, which includes overburdened and underserved communities as designated using screening tools such as the Maryland Department of the Environment’s Environmental Justice Screening Tool; potential impacts related to

climate change; potential impacts related to nuisance flooding; planting in the Critical Area Buffer; location of existing permanently protected land such as publicly owned parkland, preservation land, and land protected by easements; location of areas with limited forest cover in the Critical Area; location of other tree banks; closing gaps in canopy cover and wildlife corridors; and location of areas that will assist in wetland mitigation.

2. **Page 11, Exhibit A, Section II. Planting Plan:** A restriction has been added to limit invasive species to no more than 10% of any individual layer of canopy trees, understory trees, shrubs, and herbaceous. In addition, the planting plan now requires newly planted areas to be subject to a 5-year monitoring period as further outlined in the Exhibit.
3. **Page 13, Exhibit A, Section II. Permanent Protection:** Language has been included that details how MBs that have completed the 5-year monitoring period will continue to be monitored and maintained under the county's annual maintenance and inspection program.
4. **Pages 13-14, Exhibit A, Section II. Permanent Protection:** If the county proposes development on an MB, then it shall seek approval from the Critical Area Commission to determine how impacts are addressed. Further, if the County disposes of the land, then an easement must be placed on the property prior to disposal. This easement must be approved by both the County and the Commission.

RECOMMENDATION

Based on the discussion with the Project Subcommittee on March 6, 2024, and based on the proposed edits that have been included by the County to meet the Project Subcommittee's recommendations, Commission staff recommends approval of the Queen Anne's County Mitigation Banking Memorandum of Understanding.

Attachments

1. Mitigation Banking MOU
2. Deed of Conservation Easement
3. Tracking Spreadsheet
4. March 6th Project Subcommittee - Memo

MEMORANDUM OF UNDERSTANDING

Regarding the Establishment of Critical Area Mitigation Banks in Queen Anne's County

This Memorandum of Understanding (MOU) is entered into as of _____ 2024 by and between Queen Anne's County, Maryland and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (the Commission).

1. RECITALS

WHEREAS, pursuant to the Annotated Code of Maryland, Natural Resources Article, § 8-1806 and Code of Maryland Regulations ("COMAR") § 27.02.03, 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 local agency actions resulting in development or redevelopment of lands owned by local jurisdictions in the Critical Area; and

WHEREAS, under Natural Resources Article § 8-1808, the County was required to develop and implement a Critical Area Protection Program (the "Program"), subject to review and approval by the Commission; and

WHEREAS, under Natural Resources Article § 8-1809(c) and COMAR 27.01.01.03, notwithstanding any provision in a law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of the law and Criteria shall apply to, and be applied by, a local jurisdiction as minimum standards for a local program sufficient to meet the goals of the Critical Area program; and

WHEREAS, under COMAR 27.01.02, project approvals in the Critical Area must satisfy development standards in the form of forest and developed woodland mitigation and Buffer mitigation requirements on the development site and reduce pollutant loadings by at least 10 percent in the Intensely Developed Area (IDA); and

WHEREAS, the County is required to demonstrate compliance with those development standards when they cannot be met on-site, including through the collection of a fee-in-lieu (FIL) by the County in order to implement forest and developed woodland planting as described in COMAR §27.01.02.04.C(4)(d), Buffer planting as described in COMAR §27.01.09.01-5.B(4)(a), or any other authorized water quality and habitat enhancement projects if approved by the Commission as described in COMAR §27.01.09.01-5.B(4)(b); and

WHEREAS, the County currently collects FIL funds as part of its Program, and as allowed by the above-referenced provisions of COMAR, pursuant to the Queen Anne's County Code Sections 14:1-37.E, 14:1-38, 14:1-39, and 14:1-51.F; and

WHEREAS, Queen Anne's County, Maryland as part of its government functions proposes development projects located within the Critical Area and these projects are required to meet the goals and objectives of the County's Critical Area Program; and

WHEREAS, conditions of approval for projects proposed by Queen Anne's County may include required mitigation for unavoidable impacts to the Critical Area including disturbance to the Critical Area Buffer, forest/developed woodland clearing, and, when applicable, 10% Critical Area pollutant reduction; and

WHEREAS, the parties to this MOU have worked together to develop a site analysis process to identify mitigation sites that will provide significant benefits to habitat and water quality benefits in the Chesapeake Bay as set forth in Exhibit A to this MOU, which is hereby expressly incorporated and made a part of this MOU herein; and

WHEREAS, the parties to this MOU have worked together to develop a credit approval process to assess potential credits, track credits, and release credits as set forth in Exhibits A and B to this MOU, which are hereby expressly incorporated and made a part of this MOU herein.

NOW, THEREFORE, Queen Anne's County and the Commission agree to pursue a program under which Queen Anne's County will establish Critical Area Mitigation Banks (MBs) that will be used to offset unavoidable impacts to the Critical Area resulting from Queen Anne's County development and redevelopment projects and private development and redevelopment projects that satisfy mitigation requirements via payment of a FIL.

2. PURPOSE OF THE MOU

The purpose of this MOU is to establish a mitigation banking program consisting of a site analysis process to identify suitable Critical Area Mitigation Banking sites and a credit approval process to assess, track, and release credits for approved MBs. Toward this end, this MOU recognizes that establishment of certain Critical Area MBs, reviewed and approved by Critical Area staff, are an acceptable option for addressing unavoidable impacts to the Critical Area for Queen Anne's County projects in certain circumstances when onsite practices are not feasible. The site analysis and credit tracking processes are set forth in Exhibits A and B.

The County collects FIL funds in accordance with the provisions listed above. As of the date of approval of this MOU, the County has the following FIL balances for Critical Area impacts resulting from private development: Buffer disturbance (\$45,544), non-Buffer forest clearing (\$88,112), and 10% Critical Area SWM (\$10,830). In addition, the County has the following outstanding mitigation obligations for Critical Area impacts resulting from County projects: non-Buffer forest clearing (131 trees plus 0.68 acres) and 10% Critical Area SWM (0.18 lb P/yr). The goal of this MOU is to create MBs on parcels/lots already identified by the County, utilize existing FIL funds on these sites to address past mitigation obligations for private projects, fulfill existing County mitigation obligations, and outline a process to identify additional MBs to address future mitigation obligations.

3. QUEEN ANNE'S COUNTY ROLES AND RESPONSIBILITIES

- 3.1. Establishment of Critical Area Mitigation Banks. Queen Anne's County shall establish Critical Area Mitigation Banks that meet the minimum requirements set forth in Exhibit A. Queen Anne's County shall prioritize the development and establishment of each Mitigation Bank based on the process outlined in Exhibit A. All Mitigation Banks will be located either on land owned by Queen Anne's County, or land under a permanent conservation easement held by Queen Anne's County. Mitigation Bank approval will allow the establishment of "credits" as defined in Exhibit A.
- 3.2. Queen Anne's County shall be responsible for any applicable State and/or local regulatory requirements resulting from the implementation of its Critical Area Mitigation Banking program.
- 3.3. Queen Anne's County shall be solely responsible for the design, construction, planting, enhancement, restoration, maintenance, monitoring, and long-term protection of these Mitigation Banks.
- 3.4. Queen Anne's County will be responsible for securing five (5) years of maintenance and monitoring for all Mitigation Banks implemented in accordance with this MOU, either through a third-party partnership or by the County itself.

4. COMMISSION'S ROLES AND RESPONSIBILITIES

- 4.1. In accordance with the procedures set forth in Exhibit A, Commission staff agree to accept the submittals for proposed Mitigation Banks, monitoring reports for established Mitigation Banks, and requests to utilize credits for projects submitted by Queen Anne's County staff and to provide a response.
- 4.2. If Queen Anne's County notifies Commission staff of any changes for an approved Mitigation Bank or requests to utilize credits for a project, Commission staff shall review and respond and make recommendations based on assessment of whether the proposed changes conform with COMAR 27.02. Commission staff may require proposed changes be submitted for review and approval by the full Commission.

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 ten (10) years, unless otherwise terminated in accordance with this MOU. The term of this MOU may be extended by written agreement of both Parties.

6. ACCOUNTING AND REPORTING

- 6.1. Credit Accounting. Queen Anne's County shall maintain a Mitigation Credit Tracking Spreadsheet of credits approved by the Commission, including those debited for Critical

Area impacts resulting from private and County projects. This Mitigation Credit Tracking Spreadsheet shall ensure that each credit is clearly linked to the development/redevelopment project for which the credit was used. Attachment B-2: Mitigation Credit Tracking Spreadsheet shall be used to track mitigation credits.

- 6.2. Annual Monitoring Report. On March 1st of each year, Queen Anne's County shall provide the Commission with a monitoring report on each approved Mitigation Bank including credit tracking. The annual report shall include the following information:
- 6.2.1. Monitoring and maintenance report (Attachment B-1) for each approved Mitigation Bank including estimated costs from previous year and proposed costs for upcoming year.
 - 6.2.2. Annual administrative expenses, including money spent on monitoring and maintenance.
 - 6.2.3. Amount of FIL funds collected and spent; FIL funds must be tracked separately based on the impacts for which the FIL was collected (e.g., Buffer disturbance, non-Buffer forest clearing, 10% Critical Area SWM). The County must demonstrate that FIL spending results in providing at least 1:1 mitigation for the impacts for which the FIL was collected. Once 1:1 mitigation has been achieved, the County may utilize excess FIL funds for related activities (invasive species removal, maintenance and monitoring, etc.).
 - 6.2.4. Attachment B-2: Mitigation Credit Tracking Spreadsheet, updated by Queen Anne's County staff. The credits must be tied to a specific Mitigation Bank and the debits must be tied to a specific private or County project.
 - 6.2.5. Any third-party partner associated with implementation of a Mitigation Bank, including their specific role.

7. POINTS OF CONTACT

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

For Queen Anne's County: Stephanie Jones, Long Range Principal Planner, Queen Anne's County Planning and Zoning, 110 Vincit Street, Suite 104, Centreville, MD 21617. Phone: 410-758-1255, Fax: 410-758-2905, Email: sijones@qac.org

For the Commission: Susan Makhoulf, Natural Resources Planner, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401. Phone: 410-260-3460, Fax: 410-974-5338, Email: susana.makhoulf@maryland.gov.

8. GENERAL PROVISIONS

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

- 8.2. **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.
- 8.3. **AGENCIES HELD HARMLESS:** Recognizing that Queen Anne's County is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, Queen Anne's County 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 Queen Anne's County or any subcontractor to Queen Anne's County, 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.
- 8.4. **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 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 a higher official in each agency for appropriate resolution.
- 8.5. **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.
- 8.6. **AMENDMENTS TO EXHIBITS 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 Chair will update the Commission on any amendments or modifications to the Exhibits or their Attachments at the next meeting following the agreed-upon amendments or modifications.
- 8.7. **MARYLAND LAW PREVAILS:** This MOU shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 8.8. **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.

8.9. 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 by an electronic signature program, shall be deemed to be original signatures.

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

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Witness By: Erik Fisher, Chair

QUEEN ANNE’S COUNTY

Witness By: Amy Moredock, Director, Department of Planning and Zoning

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Emily Vainieri
Assistant Attorney General
Critical Area Commission

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Attachment A-1: Site Analysis Process for Mitigation Banks

Attachment A-2: Credit Approval Process for Mitigation Banks

Attachment A-3: Planting Agreement Template

Attachment A-4: Easement Template

Exhibit B: Annual Reports, Credit Tracking Spreadsheet, and Mitigation Banks

Attachment B-1: Annual Monitoring and Maintenance Report Template

Attachment B-2: Mitigation Credit Tracking Spreadsheet

Attachment B-3: Credit Release Form

Attachment B-4: Lot 16 Mitigation Bank

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Exhibit A: Technical Guidance Document - Queen Anne’s County Mitigation Banks

I. Introduction

This Technical Guidance Document is an exhibit to the “Memorandum of Understanding (MOU) Regarding the Establishment of Critical Area Mitigation Banks in Queen Anne’s County” between the Critical Area Commission (the Commission) and Queen Anne’s County. The purpose of this Technical Guidance Document is to provide specific requirements for Mitigation Banks (MBs) that will be used to meet Critical Area mitigation requirements.

Technical requirements and data/tools used for analysis may change with the best available science. As it is the goal of the Commission and Queen Anne’s County to create a working document that adheres to the law while providing flexibility in meeting mitigation requirements, this document is designed to change over time as experience is gained and data/tools are updated. Any changes to this document will require approval from both the Planning Director of Queen Anne’s County and the Executive Director of the Commission. Changes will be reported at the next scheduled Critical Area Commission meeting.

II. Mitigation Banks

Queen Anne’s County may propose to create a MB on land that offers targeted restoration opportunities which have been identified by the County or a public or private partnership through a site analysis process. All MBs will be located either on land owned by Queen Anne’s County, or on land under a permanent conservation easement held by Queen Anne’s County or an approved third party. These MBs may be established to address Critical Area mitigation and stormwater management requirements for County projects when onsite options are not available, or they may be used at a later date to meet mitigation requirements for future projects. In general, MBs should be established to create mitigation credits that are based on areal extent, instead of tree-for-tree credits.

When the County submits a local project for review either as a consistency report to Critical Area staff for review or as a project submittal for review and approval by the full Commission, the consistency report/project submittal should note whether the County will plant onsite or debit from a mitigation bank.

Banks may be created to address the following mitigation needs:

1. Forest/tree clearing in the Critical Area;
2. Clearing and disturbance within the Critical Area Buffer; and
3. Critical Area 10% phosphorus removal stormwater requirement for projects with disturbance between 250 and 5,000 square feet, or for projects greater than 5,000 square feet when requirements cannot be fully met onsite.

Establishment of Mitigation Banks

The establishment of a mitigation bank includes: 1) finding an acceptable location supported by ecological and opportunity evaluation tools, 2) establishing a credit and debit system, 3) planting, maintenance, and monitoring requirements 4) protection in perpetuity, and 5) completing all steps and providing all documents required in the approval process.

In general, MBs will be prioritized for establishment within the Critical Area, or at alternative locations approved by the Commission. Each site will be an individual MB. MBs can also be established through agreements with cooperating public and/or private entities as approved by Commission staff. A MB can be established to address Critical Area mitigation and stormwater management requirements for projects (1) when mitigation is either not feasible or cannot be fully accomplished onsite or (2) to address anticipated long-term mitigation requirements.

Location Criteria

1. Generally, banks should be located within the Critical Area to ensure that “no net loss” of forest coverage is achieved within Queen Anne’s County Critical Area. A minimum of 1:1 replacement of forest in the Critical Area is required.
2. Areas outside of the Critical Area may be considered for a MB if they have an ecological connection to the Critical Area through stream channels, upland and wetland riparian corridors, contiguous forests, and areas adjacent to Critical Area headwaters. Planting/preservation in these areas may offer exceptional opportunities for mitigation, especially if riparian corridors and other ecological resources do not have the same protection standards outside the Critical Area boundary.
3. Banks should aim for a minimum of 10 acres available for forest restoration including natural regeneration, but smaller areas will be considered if they provide riparian habitat for Buffer mitigation, and/or fill in forest gaps, especially in Forest Interior Dwelling Bird (FIDS) habitat, or provide other exceptional ecological opportunities.
4. Other banking options, including preservation of existing forest habitat, may be considered provided that 1:1 replacement of forest in the Critical Area can be documented.
5. MBs may be located on County-owned or private lands.
6. MBs can be established in cooperation with any public or private entity that is willing to enter into a legal agreement with the County regarding any or all components of design, construction, maintenance, and monitoring. All terms of Public-Public or Public-Private Partnership MBs, including sharing of credits, must be defined in a separate MOU between the public or private entity, the County, and the Commission.
7. The Critical Area is located throughout Queen Anne’s County following many tidal tributaries and streams. As development and tree clearing occur, efforts should be made to place MBs in the general portion of the County where the clearing occurs. MBs should be geographically distributed throughout the County based on the general location of the impact to the environment related to tree clearing that requires mitigation.

Additional factors should be considered when siting a MB. Consideration should be given to the following:

- Overburdened and underserved communities
- Potential impacts related to climate change
- Potential impacts related to nuisance flooding
- Planting in the Critical Area Buffer
- Location of existing permanently protected land such as publicly owned parkland, preservation land, and land protected by easements
- Location of areas with limited forest cover in the Critical Area
- Location of other tree banks
- Closing gaps in canopy cover and wildlife corridors
- Location of areas that will assist in wetland mitigation.

Credits

Mitigation bank credits will be established as follows:

1. Potential credits and debits on a 1:1 ratio will be determined using the areal extent.
2. Forest credits established outside the Buffer will be used as non-Buffer forest mitigation credits.
3. Forest credits established inside the Buffer will be used as Buffer mitigation credits.
4. Credits on properties with multiple ecological features (for example, non-Buffer forest and Buffer) would be tracked separately according to parameters 1 through 3 above.
5. Creation of other types of ecosystem habitat (wetland adaptation/migration corridors, pollinator habitat, etc.) will be considered for credits on a case-by-case basis.
6. Preservation credits may potentially be permitted at a ratio to be determined by Commission staff; however, no more than ½:1 credit will be allowed for preservation. The County must provide justification for the consideration of preservation credits and preservation credits will only be considered for forest not already permanently protected. Preservation credits may be considered only after 1:1 replacement has been met for each project.
7. Final credits will be released in accordance with review and approval of the Credit Release Form.
8. Commission staff will issue notice of a credit release as credits become available from approved MBs. Credits may not be used until the credits have been released.

Planting Types and Specifications

Plantings and/or natural regeneration species will be native to the Coastal Plain of Maryland, in accordance with the U.S. Fish and Wildlife Service's *Native Plants for Wildlife Habitat and Conservation Landscaping - Chesapeake Bay Watershed* handbook or the Natural Resources Conservation Service Plants Database: <https://plants.sc.egov.usda.gov/home>

Site Preparation

1. Once the Commission and County agree on a site, the County will begin preparation of the site to manage existing native vegetation and remove existing non-native invasive species.

2. The site can be selectively mowed/cleared to allow desirable species to grow and help prepare the site for planting. The existing, native vegetation can be allowed to continue growing provided it is dense enough to keep out invasive vegetation.
3. To prepare the site for planting, a combination of mowing and/or herbicides can be used to remove invasive/competing species where the plantings are to occur.
4. When removing invasive trees and other nonnative vegetation, consider mulching in place and spreading around newly planted vegetation to help control invasive vegetation and encourage natural regeneration of hardwood species.

Planting Plan

1. The planting plan should include a variety of native coastal plain species and a maintenance and monitoring plan. The plantings should ensure the replacement or establishment of a forest to ensure biodiversity and structure by including a canopy layer, understory layer, and shrub layer.
2. Remove invasive/competing species in the area where plantings are to occur.
3. Planting may include soil amendments such as compost based on the landscaper's experience regarding what will help with plant survival.
4. Planting stock size can be variable depending on site-specific parameters provided that the end result is approximately 400 woody stems per acre.
5. A watering schedule should also be included in the planting plan.
6. Mowing around trees should be included as necessary during the first several years.
7. If appropriate the landscaper should stake planted seedlings and install tree tubes/bird netting.
8. Remove tree tubes at an appropriate time to limit damage to trees.
9. Replace dead trees, as necessary.
10. Generally, 400 woody stems per acre is the goal. This includes canopy trees, understory trees, and shrubs. No more than 10% of any individual layer (i.e., canopy trees, understory trees, shrubs, herbaceous) should consist of invasive species.
11. If natural regeneration will be used to meet the 400 woody stems per acre, this should be based on adjacent forest that would provide recruitment and detailed in the planting plan. If recruitment does not occur as anticipated, then planting to meet the 400 woody stems per acre threshold will be necessary. Newly planted areas will be subject to the 5-year required monitoring period as specified in the Monitoring, Maintenance, Inspections, and Survivability section below.

Invasive Species

Invasive species are identified in the 2010 National Park Service/U.S. Fish and Wildlife Service document [Plant Invaders of Mid Atlantic Natural Areas: Plant Invaders of Mid-Atlantic Natural Areas - Invasive.Org](#) and Maryland Invasive Species Council Invasive Species of Concern in Maryland: <https://mdinvasives.org/>

In general, the species listed below are considered priority species to control. These are the species that should be controlled most aggressively. These species are considered to be more of a threat to the long-term success of forest creation. They may be more persistent, highly prolific, likely to form monocultures, more easily managed, shade tolerant, or likely to inhibit development of a forested community.

Trees and shrubs

Tree-of-heaven (*Ailanthus altissima*)
Japanese barberry (*Berberis thunbergii*)
Autumn or Russian Olive (*Elaeagnus spp.*)
Privet (*Ligustrum spp.*)
Bush honeysuckle species (*Lonicera spp.*)
Callery (‘Bradford’) pear (*Pyrus calleryana*)
Multiflora rose (*Rosa multiflora*)

Vines

Porcelainberry (*Ampelopsis brevipedunculata*)
Oriental bittersweet (*Celastrus orbiculatus*)
Winter creeper (*Euonymus fortunei*)
English ivy (*Hedera helix*)
Japanese hops (*Humulus japonicus*)
Japanese honeysuckle (*Lonicera japonica*)
Mile-a-minute (*Persicaria perfoliata*)
Kudzu (*Pueraria spp.*)
Chinese or Japanese Wisteria (*Wisteria spp.*)

Herbaceous

Bamboo (*Bambusa spp.* and *Phyllostachys spp.*)
Canada thistle (*Cirsium arvense*)
Giant hogweed (*Heracleum mantegazzianum*)
Purple loosestrife (*Lythrum salicaria*)
Reed canarygrass (*Phalaris arundinacea*)
Common reed (*Phragmites australis*)
Japanese knotweed (*Reynoutria japonica*)

Monitoring, Maintenance, Inspections, and Survivability

MB plantings shall be monitored for survival success for five years following planting. In addition, Commission staff may also inspect the plantings. County staff shall submit a monitoring report (Attachment B-1: Annual Monitoring and Maintenance Report Template) to the Commission for each year of the 5-year monitoring period, due on March 1, for the previous calendar year. A final inspection will be completed by the County and Commission staff at the

end of the 5th year to ensure the site is meeting all requirements including survivability. Commission staff reserves the right to adjust credits at any time if planting standards/requirements are not met. If native plant establishment occurs through natural regeneration of acceptable native species, this can be counted towards required planting density.

Tracking

Credits will be tracked using Attachment B-2: Mitigation Credit Tracking Spreadsheet.

Impacts to Mitigation Banks

In the event that trees/vegetation are removed in an area planted for mitigation banking credit, the County will be required to reestablish the trees/vegetation removed. The credits associated with the removed vegetation must be deleted from the tracking spreadsheet and the newly planted vegetation will be added to the tracking spreadsheet and monitoring will start again at year one for the newly planted and/or naturally regenerated vegetation. In the event that the credits have not been utilized/released, the County is not required to reestablish the removed vegetation.

Natural Events/Emergencies

Emergencies, including natural events, may impact MBs. The County may take immediate action when situations and conditions jeopardize public safety and welfare. The County shall notify the Commission as soon as possible of any activities/events that impact MBs and the extent of the impacts. County staff will work together with Commission staff to determine the best course of action for addressing the impacts.

Permanent Protection

The County must provide a mechanism for permanently protecting the MBs. For MBs on County-owned land, the County will adhere to the limitations/guidance in this section. For MBs on land not owned by the County, the MB must be under a permanent conservation easement held by Queen Anne's County or an approved third party that has been reviewed and approved by the County attorney and Critical Area staff. The County will continue to inspect the MBs after the initial 5-year monitoring period to ensure that forested conditions (including canopy, understory, and shrub layers) are maintained, and invasive species do not overtake the site. This will be accomplished by including approved MBs that have completed the initial 5-year monitoring period in the Queen Anne's County Department of Parks & Recreation's annual maintenance and inspection program. If issues (including invasive species, deer damage, dead trees, etc.) are identified, the County will implement corrective actions to address the issues.

MBs must be maintained in a forested state upon completion of plantings and/or natural regeneration. If the County proposes development in the future the County shall seek approval

from the Critical Area Commission to determine how impacts to the MB will be addressed. If the County proposes to dispose of the land, an easement approved by the County and Commission must be placed on the property prior to disposal. Permitted uses shall be consistent with forest conservation and management and be limited to passive recreation. Passive recreation includes low-impact activities conducted outdoors such as hiking, nature study, fishing, etc. Passive recreation does not include trails for the use of ATVs or other motorized vehicles. Any trails that are allowed should be public and consistent with the Commission's Public Pathways Guidance document. Structures are prohibited except for fencing which may be used to mark boundaries or educational signage. Any parking areas must be located outside the areas established for mitigation credit. Per COMAR 27.02.02, any proposed grading, construction, lot coverage, tree clearing, etc., on a County-owned MB shall be submitted to Commission staff for review as a consistency report. Activities included in a specific Forest Stewardship Plan or Forest Management Plan are allowed.

III. Submission Requirements

The County will submit to the Commission information on potential MB sites. The following information will be required as part of a complete submittal:

- Cover letter signed by the County Critical Area Planner
- Address of MB
- Tax map, parcel, lot number
- Latitude/Longitude
- GIS data (e.g., shapefile, feature class) if available
- Mitigation Bank Submittal Report as described in Attachment A-1: Site Analysis Process for Mitigation Banks
- Site preparation plan as described in Section II. Mitigation Banks: Site Preparation
- A master planting plan/schedule as described in Section II. Mitigation Banks: Planting Plan that also includes the following:
 - Key
 - Botanical name
 - Common name
 - Size and spacing
- Signed Critical Area Commission Planting Agreement (see Attachment A-3: Planting Agreement Template) including a maintenance and monitoring plan as described in Section II. Mitigation Banks: Monitoring, Maintenance, Inspections, and Survivability
- Forest Stewardship Plan if applicable
- Conservation Easement if applicable
- MOU between the public or private entity, the County, and the Commission, if applicable

Attachment A-1: Site Analysis Process for Mitigation Banks

Generally, banks should be located within the Critical Area to help ensure that there is “no net loss” of forest coverage within Queen Anne’s County. The overall goal when establishing mitigation banks should be to replace the habitat and water quality benefits that have been lost due to development activities.

The evaluation of a specific mitigation bank will require documentation of credits that could potentially be generated, and documentation of ecological values associated with those credits. The documentation needed will include general information about the site, field assessments, and the use of online landscape and ecological mapping tools. Two tools that are particularly helpful include the Watershed Resources Registry (WRR) and MD DNR’s GreenPrint (GreenPrint).

Watershed Resources Registry (WRR)

The WRR website helps locate properties with opportunities for restoration or preservation of four main ecosystem types: 1) uplands, 2) wetlands, 3) riparian areas, and 4) stormwater infrastructure-areas where existing resources should be protected for the stormwater benefits they provide. The WRR can be used to identify and evaluate potential MB sites and determine the number of credits broken out by riparian, upland restoration, etc.

When a site is selected, WRR provides location details that include the reasons a parcel is suitable for a specific mitigation or restoration opportunity and its ranking (1-5). Generally, anything scoring a 1 is ecologically/geomorphologically suited for that type of restoration. The scores then increase based on additional factors of priority across the state agencies (i.e., the area scores higher if it also falls within a green infrastructure area or is within a Tier II watershed). Essentially anything with a 1 is considered a candidate for restoration, with more weight added to its score for a higher number of acres available, or indication of a higher state priority for restoration.

GreenPrint

GreenPrint can help determine if a site is acceptable from an ecological perspective. The GreenPrint mapping tool has divided Maryland’s natural resources into five main categories:

- Green infrastructure and important forests
- Wildlife and rare species habitat
- Nontidal streams and fisheries
- Tidal fisheries and Bay and Coastal Ecosystems
- Areas important for climate resiliency such as wetland migration areas

Targeted Ecological Areas (TEAs) combine all the above categories to identify the most ecologically important areas in the state.

GreenPrint is a useful tool for desktop analysis of existing conditions. In addition, site visits and/or field work may be necessary to verify GIS data.

Mitigation Bank Submittal Report

Based on the site analysis process described above, and using additional data and/or mapping tools as needed, the County will prepare a Mitigation Bank Submittal Report that includes the following information:

General Bank Information

- Name and location
- Aerial of the site including lot lines, scale, orientation
- Total acreage in Critical Area (broken down by IDA, LDA, RCA)
- Existing structures including, but not limited to, buildings, roads, SWM systems/structures, septic areas, etc.
- Description of adjacent properties current use and/or proposed use if known
- Information on any protections that exist, such as easements either on the proposed bank site or adjacent properties
- Description of the site as listed below including potential issues such as invasive species, flooding, etc.

Potential Credits

- Site plan/aerial that shows areas/acreages of proposed planting and/or natural regeneration
- Site plan/aerial that shows areas/acreages in bullet above that also includes an estimate of potential mitigation credits for each mitigation type (Buffer disturbance, non-Buffer forest clearing, 10% Critical Area SWM). Each separate mitigation area/type should be clearly marked on the site plan/aerial and quantified in an accompanying table.

Habitat Protection and other Sensitive Area Mapping Features

- Critical Area Buffer (including expanded Buffer if applicable)
- Tidal wetlands
- Nontidal wetlands and 25-foot nontidal wetland buffer
- Threatened and endangered species and species in need of conservation
- Sensitive Species Project Review Areas (SSPRAs)
- Targeted Ecological Area (TEAs)
- Existing forest (including FIDS habitat)
- Existing native vegetation
- Soils (type, areas of hydric soils, areas of highly erodible soil)
- Connection to other natural resources

Climate Resilience Information

- Vulnerability to sea level rise, storm surge, and other coastal hazards using Maryland DNR's 2023 SLR Projections, or as amended
- Wetland adaptation/migration areas to assist in identifying appropriate plantings in these areas
- Coastal Community Resiliency (GreenPrint): Natural and/or restored areas of forest or marsh along the coast that have the potential to reduce the impact of coastal hazards
- FEMA Floodplain

Attachment A-2: Credit Approval Process for Mitigation Banks

Queen Anne's County and Critical Area staff will work together to assess each proposed MB site for the type (Buffer disturbance, non-Buffer forest clearing, and 10% Critical Area SWSM) and amount of potential mitigation credits that may be feasible on each MB site given the existing conditions, available budget, and any site constraints. The following process will be used to assess MBs for potential credits:

1. Queen Anne's County staff will submit a proposal to establish a MB as outlined in Exhibit A: Technical Guidance Document - Queen Anne's County Mitigation Banks. The proposal will include an estimate of the potential mitigation credits (Buffer disturbance, non-Buffer forest clearing, 10% Critical Area SWM) a site could provide.
2. Commission staff will review the proposal and determine the amount and type of potential mitigation credits the proposed MB could provide. Commission staff may request a site visit to verify the potential mitigation credits. Commission staff may reach out to the DNR Forester for additional guidance if necessary.
3. The potential credits for each approved MB will be tracked in Attachment B-2: Mitigation Credit Tracking Spreadsheet.
4. As applicable, the potential mitigation credits may change due to monitoring of the site as described in the Monitoring, Maintenance, Inspections, and Survivability section above.
5. Credits will be released in accordance with review and approval of Attachment B-3: Credit Release Form which must be signed by Commission staff.
6. Commission staff will issue notice of a credit release as credits become available from approved MBs. Credits may not be used until the credits have been released.

Attachment A-3: Planting Agreement Template

Queen Anne’s County Mitigation Bank Planting Agreement	
Name of Bank:	
Location of Bank:	Date of Planting:
Name of Primary Contact:	
Phone #:	
Email:	
Number of Trees Planted:	Acres Planted:
Size of trees/shrubs planted and spacing density:	
Briefly describe any pre-planting site preparation (e.g., mowing, removal of invasive vegetation, etc.):	

Briefly describe any post-planting measures to control for deer, weeds, invasive species (e.g., mowing, mulch, weed control mats, deer tubes, etc.):	
Other comments or concerns (e.g., very wet or dry soils, standing water, etc.):	
Name of Responsible Party: Signature:	Date:

Attachment A-4: Easement Template

See Easement Template

Exhibit B: Annual Reports, Credit Tracking Spreadsheet, and Mitigation Banks

Attachment B-1: Annual Monitoring and Maintenance Report Template

Queen Anne's County Mitigation Bank Monitoring and Maintenance Report	
Name/Address of Bank:	Date of Inspection:
Date of Initial Planting:	
Required Monitoring Period: 5 Years	
Monitoring Year (e.g., 1st, 2nd, etc.):	
Name of Primary Contact(s):	
Phone/Email:	
Mitigation Type (Buffer, non-Buffer Forest, 10% Critical Area SWM) and Acreage:	
Number of Trees/Shrubs Planted (Divide into sections if needed for areas that are to be established differently, such as planting/natural regeneration or combination):	
Acres Planted:	
Target Density/acre:	

<p>Describe any special measures to help ensure survival of target vegetation (e.g., use of tree tubes, initial and ongoing control of invasives, etc.):</p>
<p>Evidence of Flooding/Drought:</p>
<p>Number / Percentage of Living Trees:</p>
<p>Number / Percentage of Dead Trees:</p>
<p>Condition of Surviving Trees/Shrubs:</p>
<p>Required Replanting:</p>
<p>Evidence of Pest and/or Animal Damage (please list different types of damage and if associated with a particular species):</p>

<p>List of Invasive Species (list each identified species and place a check mark under the adjectives that best describe the species’ frequency and extent):</p>			
<p>Species:</p>	<p>Common Occasional</p>	<p>Localized</p>	<p>Widespread</p>
<p>Maintenance Measures Taken Since Previous Inspection (e.g., mowing, use of herbicides/pesticides, vegetation replacement, etc.):</p>			
<p>Costs of maintenance/vegetation replacement:</p>			
<p>Maintenance Measures Planned for Upcoming Year (e.g., mowing, use of herbicides/pesticides, vegetation replacement, etc.):</p>			
<p>Estimated costs of maintenance/vegetation replacement for upcoming year:</p>			
<p>Additional Comments and Concerns:</p>			
<p>Inspector Name(s):</p>		<p>Date:</p>	
<p>Signature(s):</p>			

Attachment B-2: Mitigation Credit Tracking Spreadsheet

See Mitigation Banking Tracking Spreadsheet

Attachment B-3: Credit Release Form

1. Mitigation Bank Name: _____
2. Mitigation Type (non-Buffer Forest, Buffer, 10% SWM): _____
3. Mitigation Credits (sf): _____
4. Remaining Credits in Bank (sf) _____
5. Project(s) Credits Applied To (if credits will be used to satisfy outstanding mitigation requirements):

6. Banking Credits (if credits will be used to establish/add to a mitigation bank for future mitigation requirements):

7. Date: _____

The undersigned certifies that the mitigation credits, as described above, have undergone a 5-year monitoring period and are available to be utilized as either mitigation credits to satisfy mitigation requirements for previously approved projects or as mitigation banking credits available for use to meet future mitigation requirements.

Signature: _____

Attachment B-4: Lot 16 Mitigation Bank

The County will provide a complete analysis using Attachment A-1: Site Analysis Process and prepare a submittal that includes the items listed under Section III. Submission Requirements. This submission will replace the preliminary analysis included here for guidance.

Mitigation Bank Analysis for Lot 16

SDAT – 20 acres* Open Space

Landings at Mattapex

Mattapex Plantation Lane

Stevensville 21666

Tax Map 70, Parcel 2, Lot 16

Owner - Commissioners of Queen Anne’s County

The site is in the Critical Area and is designated as a Resource Conservation Area.

*The acreages/areas used for this analysis are slightly different: for WRR the area used was based on an approximation of the area currently proposed as a mitigation bank. GreenPrint was based on the parcel boundary information from the MDMerlin/Coastal Atlas which is slightly greater than SDAT. The County should use the actual boundary and acreage that is proposed for the bank and rerun the WRR and GreenPrint reports with the specific area and size

Overall, the proposed Lot 16 mitigation bank is located on an acceptable site for forest and CA Buffer plantings for the following reasons:

- Although as Open Space, the site is already protected from development; there is opportunity to restore approximately 12 acres of forest and Buffer (riparian) habitat. The area of potential riparian restoration is a subset of potential upland restoration in WRR with scores ranging from 1-3.
- GreenPrint denotes that there are **wetland adaptation areas**, allowing for future wetland migration as sea levels rise, on site with a 3-star score.
- GreenPrint gives 5-stars to **Coastal Community Resiliency**.

Water Resources Registry

Area of Interest – 14.61 acres

Effective floodplain

14.61 acres

Upland Restoration opportunities	6.98 acres Score 1
	3.91 acres Score 3
	<u>0.93 acres Score 2</u>
	Total 11.82 acres
Wetland Restoration Opportunities	0.17 acres Score 4
	<u>0.1 acres Score 2</u>
	Total 1.56 acres
Riparian Restoration Opportunities	5.72 acres Score 1
	3.28 acres Score 3
	0.92 acres Score 2
	<u>0.64 acres Score 4</u>
	Total 10.55 acres
Stormwater Restoration Opportunities	7.29 acres Score 2
	<u>3.05 acres Score 3</u>
	Total 10.34 acres
Local Protected Land	14.61 acres

The soils data indicates that the Mattapex soils are moderately well-drained with a drainage class of C and minimal hydric inclusions.

WRR indicates that there is a stream/drainage crossing the property which was confirmed during our site visit.

The Conservation Benefits Assessment or GreenPrint

The GreenPrint report used a parcel size of 20.12 acres.

Targeted Ecological Area – 2.22 acres

These are lands that have been identified as the most ecologically valuable in the State. This designation carries a lot of weight. In this case, the designation is probably related to the designation of a portion of the property as a wetland adaptation area (future wetland habitat).

Habitat Connectivity – 1 star

Support of Aquatic Life – 1 star

Rare Species and Wildlife Habitat – 1 star

Forests Important for Water Quality – 1 star

Coastal Community Resiliency – 5 stars

Future Wetland Habitat – 3 stars

Proximately to Protected Lands – 5 stars

Insert WRR Report

Insert Greenprint Report

**NO TITLE EXAMINATION
NO CONSIDERATION**

**DEED OF CRITICAL AREA FOREST PROTECTION EASEMENT
QUEEN ANNE'S COUNTY, MARYLAND**

THIS DEED OF CRITICAL AREA FOREST PROTECTION EASEMENT ("Deed of Easement") is made this _____ day of _____, 20____, by and between JODY J AND SHERYL A SCHULZ, hereinafter called the "Grantors", and COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND, a body politic and corporate of the State of Maryland, hereinafter called "County".

RECITALS

WHEREAS, Grantors are the owners of a certain parcel of land situate in the Fourth Election District of Queen Anne's County, Maryland Tax Map 57, Parcel 477 (Parcel 2), which was conveyed to the Grantors by Jody J. Schulz by deed dated February 12, 2004, and recorded among the Land Records of Queen Anne's County, Maryland in Liber SM 1210, Folio 464 ("Schulz Property"); and

WHEREAS, Grantors have elected to provide the area described herein as "Critical Area Forest Protection Easement" on a 1.616 acre portion of the Schulz Property for the creation of forest to satisfy conditions of Queen Anne's County Ordinance 23-07 ("Ord. 23-07") which approved the redesignation of a portion of property know as Lot 351, Tax Map 57 from Limited Development Area (LDA) to Intensely Developed Area (IDA) ("Lot 351"), specifically requiring mitigation for clearing forest and developed woodlands; and

WHEREAS, Lot 351 is depicted on a subdivision plat prepared by DMS & Associates, LLC, titled "ADMINISTRATIVE SUBDIVISION ON THE LANDS OF NASHVILLE PROPERTIES, LLC," and dated _____ (the "Nashville Plat"), which has been recorded among the Plat Records of Queen Anne's County, Maryland in Liber _____, folio _____; and

WHEREAS, the owner of Lot 351 intends to improve said property with a self-storage facility with associated parking, stormwater management and landscaping as further describe in Queen Anne's County Maryland, Department of Planning and Zoning Site Plan # _____ ("Site Plan"); and

WHEREAS, Grantor prepared this Easement in compliance with Ord. 23-07, and said Easement is to be recorded in the Land Record of Queen Anne's following the approval of the Site Plan and recordation of the Nashville Plat.

WHEREAS, the Ord. 23-07 requires the establishment of a forest area and a forest conservation easement on, over and through the Critical Area Forest Protection Easement, to ensure the permanent protection of existing and future forest cover, as well as the management, and inspection of said area.

GRANT AND AGREEMENTS

NOW, THEREFORE, for and in consideration of the foregoing, the covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantors do hereby grant and convey unto County Commissioners of Queen Anne's County, Maryland, a body politic and corporate of the State of Maryland, its successors and assigns, a forest conservation, management, open space and access easement, of the nature and character and to the extent hereinafter set forth, in, over, through and across the aforesaid Critical Area Forest Protection Easement (as described and identified in Exhibit A attached hereto). Grantors further establish, create, and declare the restrictions herein set forth in favor and for the benefit of the County, its successors, and assigns.

2. Except as specifically provided in Paragraph 3(C) and 4 herein, Grantors covenant with the County to refrain from destroying, damaging or removing anything of nature which grows there now, or hereafter without approval of the County as to the manner, form, extent and any other aspects of the removal whatsoever, it being the express intention of the parties hereto that Grantors shall comply with the final forest conservation plan approved under Chapter 14 of the Queen Anne's County Code (that plan being entitled "Forest Mitigation Plan 23-09- On the Lands of Jody J. & Sheryl A. Schulz" dated Sept 2023 and attached hereto as Exhibit B) and that the easement area shall be preserved in a manner which protects the forest thereon, existing or to be established.

3. Grantors shall establish and maintain 1.616 acres of forest in the easement area as shown on Exhibit A per the parameters for planting and maintenance as outlined in Exhibit B, approved on (insert date).

4. Grantors hereby relinquish the right to use or develop the Critical Area Forest Conservation Easement area for any purpose whatsoever, except for the following uses:

A. Planting, maintenance, and protection in accordance with the terms and conditions as may be set forth in a Forest Planting and Maintenance Plan and Agreement;

B. Passive recreational activities (as defined in Chapter 14, Chesapeake Bay Critical Area Act) which are consistent with and do not interfere with forest conservation and

management or cause harm to forest management resources, including walking, hiking, and bird watching, provided the canopy and forest structure is maintained. The use of ATVs is prohibited;

C. Forest conservation and management practices provided substantial provisions are made for replacement of harvested trees conducted pursuant to a forest management plan approved by the Planning Director for Queen Anne's County and the Department of Natural Resources for the State of Maryland. The Forest Management Plan may include the following activities:

- i. Removal of diseased, hazardous, or invasive trees as determined by a registered forester.
- ii. Thinning.

5. All rights reserved by or not prohibited to Grantors shall be exercised so as to prevent or minimize damage to the forest and trees, streams and water quality, plant and wildlife habitats, and the natural topographic character of the easement area.

6. The County, or its duly authorized representatives, shall have the right, at reasonable hours, to enter the Critical Area Forest Protection Easement area for the sole purpose of inspecting the forest conservation area to determine whether the Grantors are complying with the terms, covenants, conditions, limitations, and restrictions herein contained.

7. No failure on the part of the County to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of the County to enforce the same in the event of a subsequent breach or default.

8. Upon any breach of the terms of this Deed of Easement the County may exercise any or all of the remedies provided in the Chapters 14 and 18 of the Queen Anne's County Code, including, but not limited to the institution of an action in equity to enjoin, by temporary or permanent injunction, such breach; to require the restoration of the forest to its condition prior to such breach, and such other legal action as may be necessary to ensure compliance with this Deed of easement and the covenants, conditions, limitations and restrictions herein contained. If Grantors are found to have breached any of its obligations under this Deed of Easement, Grantors shall reimburse the County for any costs or expenses incurred, including the consultant's fees, court costs, reasonable attorney's fees, and any administrative and overhead costs.

9. Interpretation of this agreement shall be the sole province of the County, and County may issue interpretations hereof upon the request of the Grantors or at the County's discretion.

10. This Deed of Easement does not grant the public, in general, any right of access or any right to the use of the easement area, or any other portion of the property. This easement extends only to those areas designated as the Critical Area Forest Conservation Easement area and necessary access thereto as depicted on Exhibit A.

11. The Grantors further covenant and agree that the easements, rights of way, covenants and agreements contained herein shall run with the Critical Area Forest Conservation

Easement area and all portions thereof and shall bind the Grantors and their heirs, personal representatives, successors and assigns and shall bind all present and subsequent owners of the property identified herein.

12. This Deed of Easement shall be binding upon the personal representatives, heirs, successors and assigns of the parties hereto.

TO HAVE AND TO HOLD the said easement unto the Commissioners of Queen Anne's County, Maryland, a body politic and corporate in the State of Maryland, its successors and assigns, forever, for the uses and purposes herein before described.

AND the said Grantors covenant that they have not done nor suffered to be done anything to encumber the property, easement, and or rights hereby conveyed and that they will execute such other and further assurances of the same as may be necessary and requisite.

AS WITNESS our hands and seals the day and year first above written.

WITNESS:

GRANTORS:
JODY J. SCHULZ

SHERYL A. SCHULZ

STATE OF MARYLAND, _____ COUNTY, TO WIT:

I hereby certify that on this _____ day of _____, 202_ before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Jody J. Schulz and Sherly A. Schulz, known to me (or satisfactorily proven) to be the within Grantors and they did acknowledge the foregoing Deed of Easement to be their act for the uses and purposes therein contained and set forth.

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

Notary Public

My commission expires:

Approved as to legal sufficiency.

Jeffrey Thompson, Esq.
Acting Attorney Queen Anne's County
Department of Planning and Zoning

Date

This document was prepared under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland.

Joseph A. Stevens, Attorney

Critical Area Forest Protection Easement Area
Exhibit A

The Deed of Easement shall be all that tract or parcel lying and being in the Fourth Election District of Queen Anne's County, State of Maryland, and being more particularly described as that 1.616 acre area "Critical Area Forest Protection Easement" on a plat entitled "ADMINISTRATIVE SUBDIVISION ON THE LANDS OF NASHVILLE PROPERTIES, LLC," and dated _____ (the "Nashville Plat"), which has been recorded among the Plat Records of Queen Anne's County, Maryland in Liber _____, folio _____ (sheets __ and __).

DRAFT

Project Name	CAC Letter Sent	Project Description	Project Address	Critical Area Designation	Mitigation Required (sf or lb P/yr)			Contact Information (Name, Phone, Email)	Notes/Comments
					Buffer	Non-Buffer Forest**	10%		
SKI Sanitary Sewer Phase I*	7/16/2016	Consistency Report	Southern Kent Island			49 trees (4,900 sf)		Steve Cohoon	
SKI Sanitary Sewer Phase II*	10/30/2019	Consistency Report	Southern Kent Island	LDA and RCA		0 trees		Steve Cohoon	
Kent Island Library Expansion	2/12/2020	Consistency Report	200 Library Circle, Stevensville	LDA		29,621 sf (0.68 ac)		Steve Cohoon	
SKI Sanitary Sewer Phase III*	5/10/2021	Consistency Report	Southern Kent Island	LDA		92 trees (9,200 sf) (cumulative for SKI as of 3/1/21)		Steve Cohoon	9/23: Steve to confirm tree clearing for Phase III which is wrapping up soon
Worcester Road	9/22/2022	Consistency Report	40-foot County-owned ROW of Worcester Road in Stevensville	LDA		25 trees (2,500 sf)		Steve Cohoon	
Virginia Road	7/6/2023	Consistency Report	40-foot County-owned ROW of Virginia Road in Stevensville, from Bay Drive to North Lake Drive	LDA		14 trees (1,400 sf)		Steve Cohoon	
Cross Island Trail Improvements/Expansion	11/6/2023	Consistency Report	north of US50/301 at Kent Narrows East	IDA			0.18	Stephanie Jones	
SKI Sanitary Sewer Phase IV*	12/19/2023	Consistency Report	Southern Kent Island	IDA and RCA				Steve Cohoon	

*The SKI Sanitary Sewer project tree clearing form includes a \$35/tree FIL which is specific to the SKI project.
 **Multiply number of trees removed by 100 sf to calculate required mitigation.

Date	Mitigation Required				Mitigation Proposed				Mitigation Approved	*Excess FIL Funds	Notes/Comments
	FIL Type (Buffer, Non-Buffer Forest, 10%)	Impacts (sf or lb P/yr)	FIL Rate*	FIL Collected	Mitigation Bank Name	Planting Date	Amount (sf or lb P/yr)	Amount of FIL Spent	Credit Release Form Date		
County 2022 FIL Spreadsheet	Buffer Disturbance	30,363	\$1.50	\$45,544.00							
County 2022 FIL Spreadsheet	Non-Buffer Forest Clearing	58,741	\$1.50	\$88,112.00							
County 2022 FIL Spreadsheet	10% Critical Area SWM	0.3334	\$32,500.00	\$10,830.00							

*FIL spending must provide at least 1:1 mitigation for the impacts for which the FIL was collected before FIL funds can be used for other activities including invasive species removal, etc.

Project Name	Mitigation Required			Mitigation Approved*
	Mitigation Type (Buffer, Non-Buffer Forest, 10%)	Mitigation Proposed (sf or lb P/yr)	Mitigation Bank Name	Credit Release Form Date
County Projects				
SKI Sanitary Sewer Phase I		49 trees (4,900 sf)		
SKI Sanitary Sewer Phase II		92 trees (9,200 sf)		
		(cumulative for SKI as of		
SKI Sanitary Sewer Phase III		3/1/21)		
Worcester Road		25 trees (2,500 sf)		
Virginia Road		14 trees (1,400 sf)		
Kent Island Library Expansion		29,621 sf (0.68 ac)		
County Parks project on Kent Narrows				
Cross Island Trail				
Improvements/Expansion		0.18 lb P/yr		
SKI Sanitary Sewer Phase IV				

FIL for Private Development		
Buffer		30,363
Non-Buffer Forest		58,741
10%		0.3334

Final approval of mitigation credits requires Commission site visit and signed Credit Release

Mitigation Bank Name	Mitigation Bank Address	Mitigation Credit Proposed (sf or lb P/yr)*			Mitigation Credit Tracking*					Mitigation Approved***		Credits Used for County Projects and/or FIL	Credits Available for Mitigation Banking Credit****	Contact Information (Name, Phone, Email)	Notes/Comments
		Buffer	Non-Buffer Forest	10%	Planting Date	Monitoring Year 1 (credits)	Monitoring Year 2 (credits)	Monitoring Year 3 (credits)	Monitoring Year 4 (credits)	Monitoring Year 5 (credits)	Credit Release Form Date				

Lot 16

*Mitigation credits are tracked based on areal extent and each type of mitigation must be tracked separately

**The Annual Monitoring Report will include an assessment of existing mitigation credits including any changes from the previous year

***Final approval of mitigation credits requires Commission site visit and signed Credit Release Form

****Excess credits may be used to establish a bank

**CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100
Annapolis, Maryland 21401**

MEMORANDUM

To: Critical Area Commission Project Subcommittee

From: Susan Makhoulouf, Natural Resources Planner

Date: March 6, 2024

Subject: Draft Mitigation Banking Memorandum of Understanding, Queen Anne's County

Over the past year, staff from the Critical Area Commission and Queen Anne's County have worked together to develop a Mitigation Banking Memorandum of Understanding (MOU) between Queen Anne's County and the Critical Area Commission. Queen Anne's County wishes to meet with the Project Subcommittee to discuss the draft MOU for preliminary review and comment before officially submitting it for Commission approval.

MOU Purpose and Need

Under Natural Resources Article § 8-1808, Queen Anne's County was required to develop and implement a Critical Area Protection Program (the "Program"), subject to review and approval by the Commission. Per COMAR 27.01.02, project approvals in the Critical Area must satisfy development standards in the form of forest and developed woodland mitigation and Buffer mitigation requirements on the development site and reduce pollutant loadings by at least 10 percent in the Intensely Developed Area (IDA). In certain instances, these mitigation standards are not able to be met on site, in which case the County may collect a fee-in-lieu (FIL) of mitigation. Those fees are then spent by the County on appropriate planting programs. In addition to the possibility of collecting FIL on private development projects, from time to time the County itself is required to provide mitigation which they cannot accommodate on-site. As of the date of this memo, the County has the following FIL balances for Critical Area impacts resulting from private development projects: Buffer disturbance (\$45,544), non-Buffer forest clearing (\$88,112), and 10% Critical Area SWM (\$10,830). In addition, the County has the following outstanding mitigation obligations for Critical Area impacts resulting from County projects: non-Buffer forest clearing (131 trees plus 0.68 acres) and 10% Critical Area SWM (0.18 lb P/yr). The purpose of this MOU is to establish a mitigation banking program and establish planting sites for the purposes of spending FIL monies and meeting County obligations.

The proposed MOU includes a site analysis process to identify suitable Critical Area Mitigation Banking (MB) sites and a credit approval process to assess, track, and release credits for approved

MBs. The MOU will allow for the establishment of MBs, reviewed and approved by Critical Area staff, as an acceptable option for addressing unavoidable impacts to the Critical Area for Queen Anne's County projects in certain circumstances when onsite practices are not feasible. The goals of the MOU are to 1) create MBs on parcels/lots already identified by the County, 2) utilize existing FIL funds on these sites to address past mitigation obligations for private projects, 3) fulfill existing County mitigation obligations, and 4) outline a process to identify and approve additional MBs to address future mitigation obligations.

The draft MOU, including attachments, is attached to this memo. A summary of each of the individual sections in Exhibits A and B, including attachments, is provided below.

Exhibit A: Technical Guidance Document – Queen Anne's County Mitigation Banks

The Technical Guidance Document outlines the processes and procedures that will be followed to establish Mitigation Banks (MBs) that will be used to meet Critical Area mitigation requirements. These include: a site analysis process; a credit approval process; guidance regarding planting, site preparation, monitoring and maintenance; and permanent protection requirements. Data and tools used for analysis may change as scientific knowledge advances; therefore, this document is designed to change over time as experience is gained and data and tools are updated.

The County may propose to create a MB on County-owned land or via a public or private partnership. All MBs will be subject to a site analysis process and will be located either on land owned by Queen Anne's County, or on land under a permanent conservation easement held by Queen Anne's County or an approved third party. MBs will address Critical Area mitigation and stormwater management requirements for County projects when onsite options are not available, or they may be used at a later date to meet mitigation requirements for future County projects. MB credits will be based on areal extent, instead of tree-for-tree credits.

Mitigation banks may address the following mitigation needs:

1. Forest/tree clearing in the Critical Area;
2. Clearing and disturbance within the Critical Area Buffer; and
3. Critical Area 10 % phosphorus removal stormwater requirements for projects with disturbance between 250 and 5,000 square feet, or for projects greater than 5,000 square feet when requirements cannot be fully met onsite.

Establishment of Mitigation Banks

MBs will be established within the Critical Area, or at alternative locations outside of the Critical Area approved by the Commission. MBs can also be established through agreements with cooperating public and/or private entities as approved by Commission staff.

Location Criteria

Banks should be located within the Critical Area to ensure that "no net loss" of forest coverage is achieved within Queen Anne's County Critical Area. A minimum of 1:1 replacement of forest in the Critical Area is required. Areas outside of the Critical Area may be considered for a MB if they have an ecological connection to the Critical Area, such as the creation of Forest Interior Dwelling

Habitat (FIDS), riparian stream habitat, or wetland migration areas. In general, banks should be a minimum of 10 acres in size. Preservation of existing forest habitat may be considered provided that 1:1 replacement of forest in the Critical Area can be documented. MBs may be located on County-owned or private lands. The County may also enter into a legal agreement with any willing public or private entity to establish a MB.

Credits

Mitigation bank credits will be established on a 1:1 ratio using the areal extent of forest created. Forest credits established outside the Buffer will be used as non-Buffer forest credits and forest credits established inside the Buffer will be used as Buffer mitigation credits. Credits on properties with multiple ecological features (for example, Buffer and non-Buffer forest) will be tracked separately. Creation of other types of ecosystem habitat (wetland adaptation/migration corridors, pollinator habitat, etc.) will be considered for credits on a case-by-case basis.

The MOU allows for preservation credits but only under the following parameters: 1) no more than ½:1 credit will be assigned to preservation; 2) The County must provide justification to Commission staff for the consideration of preservation credits; 3) preservation credits will only be considered for forest not already permanently protected; and 4) preservation can only be used by the county for a project once a 1:1 replacement of trees cleared has been met for each project. Final credits will be released in accordance with review and approval of Attachment B-3: Credit Release Form, which must be signed by Commission staff.

Planting Types and Specifications

The MOU includes several references for species that are native to the Coastal Plain of Maryland.

Site Preparation

Once the Commission and County agree on a site, the County will prepare the site by managing existing native vegetation and removing existing non-native invasive species. Selective mowing/clearing to allow desirable species to grow and help prepare the site for planting is permitted. Existing, native vegetation can continue to grow. Mowing and/or herbicides can be used to remove invasive/competing species. When removing invasive trees and other nonnative vegetation, mulching in place, and spreading the mulch around newly planted vegetation can help control invasive vegetation and encourage natural regeneration of hardwood species.

Planting Plan

The planting plan will consist of a variety of native coastal plain species and will include a canopy layer, understory layer, and shrub layer. Invasive species must be managed, and a watering schedule should be included. Mowing around trees is encouraged to control competing vegetation and tree tubes/bird netting should be installed, as necessary. Tree tubes should be removed at an appropriate time to limit damage to growing trees. Generally, 400 woody stems per acre is the goal and natural regeneration can be included if there is an adjacent forest to provide recruitment and natural regeneration is documented in the annual monitoring reports.

Invasive Species

The MOU includes several references for the identification of invasive species and a list of priority species to control.

Monitoring, Maintenance, Inspections, and Survivability

MB plantings will be monitored for survival success for five years following planting and the County will submit a monitoring report to the Commission for each year of the 5-year monitoring period, due on March 1, for the previous calendar year. A final inspection will be completed by the County and Commission staff at the end of the 5th year to ensure the site is meeting all requirements including survivability.

Tracking

Credits will be tracked using Attachment B-2: Mitigation Credit Tracking Spreadsheet.

Impacts to Mitigation Banks

If a future county project requires trees/vegetation to be removed in an MB area, the County will be required to reestablish the trees/vegetation removed. The credits associated with the removed vegetation will be deleted from the tracking spreadsheet and the newly planted vegetation will be added to the tracking spreadsheet. Monitoring will start again at year one for the newly planted and/or naturally regenerated vegetation.

Natural Events/Emergencies

The County will notify the Commission as soon as possible of any activities/events, including natural disasters and emergencies, that impact MBs and the extent of the impacts. County staff will work together with Commission staff to determine the best course of action for addressing the impacts.

Permanent Protection

MBs must be under a permanent conservation easement held by Queen Anne's County or an approved third party that has been reviewed and approved by the County attorney and Critical Area staff. The County will periodically inspect the MBs after the initial 5-year monitoring period to ensure that forested conditions are maintained, and invasive species do not overtake the site. Permitted uses shall be consistent with forest conservation and management and be limited to passive recreation such as hiking, nature study, fishing, etc. The use of ATVs and other motorized vehicles is prohibited. Any trails that are allowed should be public and consistent with the Commission's Public Pathways Guidance document. Structures are prohibited except for fencing and any parking areas must be located outside the areas established for mitigation credit.

Submission Requirements

The MOU includes a list of information/documents required as part of a complete submittal for a new MB. These include a cover letter, Mitigation Bank Submittal Report which includes a detailed site-specific analysis, site preparation plan, planting plan, signed planting agreement, and a maintenance and monitoring plan. If applicable, a Forest Stewardship and/or Conservation Easement is also required.

Attachment A-1: Site Analysis Process for Mitigation Banks

County and Commission staff worked closely to develop a site analysis process for proposed mitigation banks. The purpose of the analysis is to ensure that approved mitigation banks will provide significant ecological benefits to replace the habitat and water quality benefits that have been lost due to development activities. The analysis recommends two (2) tools: the Watershed Resources Registry (WRR) and the DNR GreenPrint map. The WRR identifies potential sites for restoration and/or preservation opportunities and can be used to assess and compare proposed mitigation sites. DNR's GreenPrint displays Targeted Ecological Areas which are lands and watersheds of high ecological value and have been identified as conservation priorities by DNR. The result of the site analysis process will be a Mitigation Bank Submittal Report, which is required for a complete submission to Commission staff when the County proposed a new MB. The Submittal Report will include detailed, specific ecological information for any proposed mitigation site in addition to current site conditions, information regarding Habitat Protection Areas (HPAs), climate resilience information, and an estimate of potential mitigation credits.

Attachment A-2: Credit Approval Process for Mitigation Banks

Proposals for new mitigation banks will include an estimate of potential mitigation credits. Commission staff will review the proposal and verify the potential mitigation credits the site could provide. This determination may include a site visit. The potential credits will be tracked using Attachment B-2: Mitigation Credit Tracking Spreadsheet. Credits will be released upon completion of a 5-year monitoring period and in accordance with review and approval of Attachment B-3: Credit Release Form which must be signed by Commission staff.

Attachment A-3: Planting Agreement Template

The Planting Agreement Template will be used to prepare a planting agreement which is required for a complete submittal. The planting agreement must be signed by County staff and includes site preparation information, post-planting measures for deer control and invasive species management, and a planting schedule.

Attachment A-4: Easement Template

The Easement Template is a recently approved Critical Area Forest conservation easement. The template will require modification for each individual MB. However, the Easement Template will provide a framework to assist in drafting specific easements for approved MBs.

Exhibit B: Annual Reports, Credit Tracking Spreadsheet, and Mitigation Banks

Attachment B-1: Annual Monitoring Report Template

The Annual Monitoring Report Template will be used to prepare the annual reports during the required 5-year monitoring period. The monitoring reports will include information regarding the condition of the plantings including any evidence of animal damage and invasive species. The reports will also describe the maintenance (e.g., mowing, herbicide use, vegetation replacement, etc.) performed during the previous year and the planned maintenance activities for the upcoming year. The reports, which must be signed and dated by the inspector, will be submitted to Commission staff by March 1, for the previous calendar year.

Attachment B-2: Mitigation Credit Tracking Spreadsheet

The Mitigation Tracking Spreadsheet will be used to track mitigation credits. Credits will be tracked by mitigation type (Buffer disturbance, non-Buffer forest clearing, Critical Area 10% SWM, etc.). Each credit will be tied to a specific project and all credits will be tracked over a 5-year monitoring period. A final inspection will be completed by the County and Commission staff at the end of the 5th year to ensure the site is meeting all requirements including survivability. Credits will be released upon review and approval of Commission staff and credits may not be used until notice is provided via a Credit Release Form, signed by Commission staff.

Attachment B-3: Credit Release Form

The Credit Release Form, signed by Commission staff, is the official notice of credit release.

Additional Attachments: Approved MBs

As written, the MOU will include separate attachments for each approved MB. Staff are currently working with the County to create a MB on a 20-acre County-owned lot located at the intersection of Romancoke Road and Matapex Plantation Lane on Southern Kent Island in Stevensville (Lot 16). Commission staff will briefly discuss this process during the subcommittee meeting.

Project Subcommittee Discussion

The purpose of this Project Subcommittee discussion is to provide preliminary feedback to Queen Anne's County regarding the draft Mitigation Banking MOU. Based on feedback, staff intends to officially submit the MOU to the April 17th Project Subcommittee and to the full Critical Area Commission for final review and approval at the May 1st Commission meeting. Queen Anne's County wants to ensure that any questions from the Commission are addressed well in advance before this final review.

The Project Subcommittee will be asked to discuss their comfortability with the general outline and parameters of the MOU, with particular focus on whether the Commission has questions/concerns regarding any specific issue/requirement or section in the MOU and/or any guidance/feedback regarding the overall MOU.

Queen Anne's County staff has been invited to attend the Project Subcommittee meeting to help answer any questions and to hear the subcommittee's feedback.

If you have any questions regarding the proposed Mitigation Banking MOU prior to the upcoming discussion at the March 6, 2024 Commission meeting, please contact Susan Makhoulf at susana.makhoulf@maryland.gov or (410) 260-3476.