

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on this 20<sup>th</sup> day of November, 2023 by and between the MARYLAND TRANSPORTATION AUTHORITY (“MDTA”) 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**, MDTA is an independent agency responsible for constructing, managing, operating and improving the State’s toll facilities;

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

**WHEREAS**, MDTA and the Commission entered into an MOU in 2015 which provided clarification of procedures by which MDTA could conduct development activities in the Critical Area as a way to ensure that any such activities were consistent with the Commission’s criteria;

**WHEREAS**, MDTA and the Commission have recognized the need to revise and replace that 2015 MOU with this new 2023 MOU to ensure that the interaction between the Parties related to Critical Area development activities, procedures, and approvals are up-to-date and efficient; and

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

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

## **1 PURPOSE OF AND BACKGROUND FOR THIS MOU**

1.1 The purpose of this MOU is to clarify the terms and procedures by which MDTA 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 MDTA 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 MDTA for certain classes of development, pursuant to COMAR 27.02.05. The conditions for general approval is attached hereto, and incorporated herein by reference, as Exhibit A. When a project by another entity (such as a local jurisdiction) is proposed on MDTA land, this MOU may apply and MDTA 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**

3.1 MDTA 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 A. The following information must be included as part of the submittal:

- Project location map;
- Site plan that includes the Critical Area and 100-foot/expanded Buffer, if applicable;
- An existing features site plan;
- A description of the proposed work;
- If applicable, 10% stormwater management (SWM) calculations, associated drainage map, and site plan showing the location of proposed SWM best management practices;
- If applicable, a Buffer Management Plan in accordance with COMAR 27.01.09.01;
- If applicable, a planting plan for clearing located outside of the Buffer;
- All applicable Agency Letters: Department of Natural Resources (DNR) Wildlife and Heritage Service, DNR Fisheries, US Fish and Wildlife Service, or Maryland Historical Trust (MHT);
- If applicable, tracking numbers and status associated with other State agency permits and approvals, including the Maryland Department of the Environment (MDE) Nontidal Wetlands and Waterway Permit or General

Tidal Wetlands License; the DNR Environmental Review letter; and the MHT Review letter;

- Maps and other required information that details how the project addresses climate change and sea level rise in accordance with COMAR 27.01.02.05; and
- If applicable, justification to allow additional minor projects under the MOU to exceed current Category II thresholds.

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.

3.2 For any development project that exceeds the strict terms of this MOU, MDTA 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 MDTA of this decision.

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

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

3.5 Commission staff and MDTA 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.

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

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

#### **4 REPORTING**

4.1 On September 1<sup>st</sup> of each year, MDTA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this MOU that require 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 1<sup>st</sup> of each year, MDTA 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 **BANKING:** MDTA and the Commission will work together to create a mitigation banking program to meet mitigation requirements. The Parties agree that MDTA may create mitigation banks where MDTA can accumulate credits for providing environmental mitigation over and above the amount required by the Commission for a particular project, or through the establishment of ecosystem banking areas. The Commission may approve mitigation banks, allowing predetermined credits for mitigation to be applied to future projects. The process, terms, and conditions of such banks will be set forth in separate agreements.

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

#### **6 PUBLIC SAFETY**

Certain situations and conditions jeopardizing public safety and welfare may require

MDTA to take emergency action in the form of development in the Critical Area. MDTA may undertake the necessary remedial actions without prior Commission approval; however, MDTA shall notify the Commission of the development activities as soon as possible and shall obtain Commission recommendation for any necessary actions to ensure compliance with the Commission's project approval.

## **7 POINTS OF CONTACT**

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

For MDTA:

Office of Engineering and Construction Environmental Manager  
300 Authority Drive  
Baltimore, MD 21222

For the Commission:

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

## **8 TERM**

This MOU shall become effective on the date on which 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.

## **9 GENERAL PROVISIONS**

9.1 **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.

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

9.3 **AGENCIES HELD HARMLESS:** Recognizing that MDTA is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, MDTA 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 MDTA or any subcontractor to

MDTA, or the subcontractor's employees, agents, or representatives. This is not to be deemed as a waiver of any immunity which may exist in any action.

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

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

9.6 AMENDMENTS TO EXHIBIT A: The Parties acknowledge and agree that Exhibit A is the result of a joint effort by the Parties. Because Exhibit A may evolve with gained experience during implementation of the MOU, the Parties agree that Exhibit A 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 A at the next meeting following the agreed-upon amendments or modifications.

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

9.8 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.

9.9 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.

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

Kathryn Durand  
WITNESS

By: Erik N. Fisher  
Erik N. Fisher, Chair

**MARYLAND TRANSPORTATION AUTHORITY**

Selena McKissick  
WITNESS

By: Percy Dangerfield 11/28/2023  
Percy E. Dangerfield, Acting Executive Director

**APPROVED AS TO FORM AND  
SUFFICIENCY:**

*Emily A. Vainieri* 11/27/2023  
\_\_\_\_\_  
Assistant Attorney General  
Critical Area Commission

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

*Kimberly M. Decker* 11/28/2023  
\_\_\_\_\_  
Assistant Attorney General  
Maryland Transportation Authority

## Exhibit A

### **1.0 Conditions for General Approval of Maryland Transportation Authority (MDTA) 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 requirements 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 in Sections 2.0 and 3.0, for each project Category.

MDTA 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). MDTA currently reviews projects during planning to determine if they are located in a zone of sea level rise or coastal flooding. MDTA Office of Engineering and Construction (OEC) requires each project to conduct a review that addresses climate resiliency; this review aligns with the Commission's climate resiliency regulations. Coast Smart siting and design guidelines will be incorporated to the maximum extent practicable to ensure avoidance and minimization of impacts to the highway network in vulnerable locations.

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

### **2.0 Category I: Limited Reporting Activities**

The purpose of Category I projects is to maintain the life expectancy of facilities or roads, landscape projects, environmental restoration, stormwater management projects and/or minor improvements to existing roadways and facilities. Projects that qualify under Category I do not require Critical Area 10% stormwater management; nor do they require a climate resiliency assessment. On September 1<sup>st</sup> of each year, MDTA shall provide the Chair of the Commission with a report on those projects that qualify under Category I of this Exhibit that require removal of trees.

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



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

Any project that qualifies under Category I is permitted in all Critical Area designations and within the Buffer, provided that no more than 5 trees are removed, there are no impacts to habitat protection areas, and disturbed areas are stabilized. Every tree removed must be replaced with one native tree (minimum size 3/4-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 practices. There are no forest clearing limits or mitigation requirements for invasive species management, the maintenance of an existing stormwater management practice, or the removal of trees from existing dam embankments unless described below.

### **CATEGORY I ELIGIBLE PROJECTS:**

#### BENEFICIAL AND NON-DEVELOPMENT RELATED PROJECTS

- Invasive species removal and management, including Phragmites control, or exotic species management, including emerald ash borer control, provided the site is stabilized and revegetated in native vegetation as necessary. If clearing invasive trees, such as ailanthus, more than 5 trees can be removed as long as they are replaced 1:1 with native species of trees.
- Controlling vines growing on trees
- Meadow restoration
- Forest plantings
- Landscape plantings and maintenance
- Wetland and stream monitoring and remediation permit activities
- Soil borings
- Installation of monitoring wells
- Removal of debris (no temporary or permanent impacts to the Buffer)
- Streetscaping
- Pavement removal
- Wetland/waterway stewardship, provided that no Habitat Protection Areas are impacted, other than the Buffer
- Removal of up to five (5) hazardous trees
- Waterfowl impoundment construction, provided that no Habitat Protection Areas are impacted, other than the Buffer

#### ROADWAY MAINTENANCE AND INSTALLATION OF MINOR TRAFFIC DEVICES

- Repair, modification, installation, and/ or replacement of:
  - Fencing
  - Signs

- Traffic signals and monitoring equipment
- Signal preemption equipment
- Guardrails and safety barriers
- Railroad warning devices
- Improved crossing surfaces at grade for railroads
- Overhead signs and lighting
- Permanent variable message signs
- Installation of anodes and wire tests
- Pavement markings
- Snow and ice detectors
- Vehicle loop detectors
- Pavement grooving and rumble strips
- Roadway lighting
- Closed Circuit Television (CCTV)
- All Electronic Toll Gantries
- Highway Advisory Radio Station sites
- Replacement, patching, resurfacing, and/or milling of roadways (including potholes and malfunctioning joints)
- Replacement, patching, resurfacing, and/or milling of intersections, bicycle facilities, parking lots, and/or sidewalks where there is no net increase in imperviousness and impervious areas that are removed are stabilized
- Replacement or repair of existing hardscaping
- Unimproved stone/asphalt shoulder - conversion to paved shoulder over Graded Aggregate Base
- Widening of shoulder for temporary traffic shifting for projects not associated with Category II projects or for projects that require full Critical Area Commission Review. Temporary projects may only last up to two years and area must be restored to its original condition.
- Archaeological testing, all Phase 1 and 2 Assessments and any Phase 3 Assessment not associated with a larger project

#### STRUCTURAL AND FACILITY MAINTENANCE PROJECTS

- Interior modification or interior renovation of buildings/structures
- Exterior renovations and building maintenance where no ground disturbance will occur
- Replace hydraulic lifts (which may include removal of contaminated soil)
- Replace septic systems outside the Buffer or replace septic systems inside the Buffer using best available technology
- Repairs to truck weigh stations, salt domes, rest areas, or similar MDTA facilities.

#### STORMWATER PROJECTS

- Pavement removal with stabilization, including areas within the Critical Area Buffer
- Construction of stormwater management (SWM) practices within MDOT MDTA 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
- Maintenance or enhancement of stormwater practices within the footprint of the existing feature, including access easement for up to 20,000 square feet of cutting, clearing, or grubbing of existing woody vegetation. There are no mitigation requirements for the maintenance of an existing stormwater practice.
- Removal of woody vegetation from existing dam embankments. There are no clearing limits or mitigation requirements.

## BRIDGE, CULVERT, AND DRAINAGEWAY MAINTENANCE

### Drainage Improvements

- Repair and replacement of
  - pneumatically applied mortar
  - rip rap
  - grout bags
  - lining mortar
  - existing slope failure protection
  - drainage improvement within existing roadway where impervious surface is not increased and stormwater management is not required
  - ditch or swale restoration to originally 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 outfalls, pipes, structures and plunge pools to include 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
  - wingwalls
  - 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

### Bridges (in-kind)

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

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

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

SLOPE STABILIZATION AND DAM EMBANKMENTS

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

ACCESS ROADS

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

SIDEWALKS AND ADA RAMPS

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

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

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

**Note: Early coordination with Commission staff on Category II projects is required 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 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:**

1. No impacts to Habitat Protection Areas other than the Buffer, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) MDTA adheres to all conditions and guidance provided by any MDE authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable).
2. No new buildings or other facilities that do not qualify as water dependent structures (other than roads, bridges, and utilities) are permitted 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. 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.
4. MDTA will identify, and where feasible incorporate, climate resilient practices in order to avoid or minimize environmental and structural damage associated with a coastal hazard, extreme weather event, sea level rise, or other coastal impact per COMAR 27.02.05.02.A(1). MDTA requires each project located within Critical Area to conduct a review to address climate resiliency. MDTA projects will assess climate resiliency using appropriate resources; the data layers for this review are provided by the MDOT SHA Climate Change Vulnerability viewer on ARCGIS. Relevant data layers include Nuisance Tidal Inundation/Flooding, Roadway Inundation, Comprehensive Flood Modeling Depth Grids and Hurricane Florence Models.

5. Forest and developed woodland clearing may not exceed 20,000 square feet for linear projects and stormwater management projects/practices. Forest and developed woodland clearing may not exceed 5,000 square feet for non-linear projects.
6. Limits of disturbance (LOD) =
  - Linear LOD – No square footage limit. Permanent disturbance must be limited to a 5-foot width.
  - 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.
7. Shore Erosion Control linear footage limit - 500 linear feet.
8. For non-linear projects, new lot coverage may not encroach into the Buffer closer than existing lot coverage, unless MDTA provides adequate justification that encroachment is necessary.
9. Projects may be permitted to exceed Parameter Nos. 5-8 listed above and still qualify as a Category II project, but MDTA 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.

MDTA 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 does not change the nature of the road; adding new trail to an existing trail does not change the nature/intensity or use of the trail);
- The proposed surface is the same as the existing surface (e.g. – asphalt will remain asphalt, grass will remain grass, etc.);
- After completion of the work, the site will be restored to original conditions;
- All work will be completed within MDTA 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 (salt dome, shed that does not contain offices, garage with no offices); or
- The purpose of the project is to address safety concerns.

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

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

### 11. Buffer Mitigation =

- 2:1 for a water-dependent project within a new developed area.
- 1:1 for redevelopment of a water-dependent project within an existing developed area 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.

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 that describes "redevelopment", "reconstruction", "new development", and "maintenance".

### **3.2 CATEGORY II ELIGIBLE PROJECTS:**

The following is a list of projects that 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 MDTA and reviewed by the Commission under Category II.

#### CATEGORY I PROJECTS (Determined on a case-by case basis regarding 10% requirements)

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

#### STRUCTURAL AND FACILITY EXPANSION PROJECTS (10% required)

- Buildings/structures – new, addition/expansion of existing, replacement, relocation, in-kind, etc. Structures include salt domes, trailers, sheds, fuel stations, dewatering stations, temporary buildings (trailer offices) and garages.
- Repairs to or replacement of truck weigh stations, salt domes, rest areas, or installations that require MDE SWM

#### SHORE EROSION CONTROL (10% not required)

- New/replacement shore erosion control measures (revetment, bulkheads, living shorelines) – MDE authorization is required.

#### DRAINAGE IMPROVEMENTS (10% not required)

- Install new or enhance existing storm drain outfalls
- Install new or enhance existing inlets and storm drains
- Install new or enhance existing drainage conveyance

### ROADWAY, PARKING AND SIDEWALK PROJECTS (10% required)

- Install new bicycle lanes (except for multi-use paths – See Special Projects) or sidewalks
- Reconstruct, replace, patch, resurface, and/or mill roadways, intersections, bicycle facilities, parking lots, and/or sidewalks where an increase to impervious is proposed
- Unimproved stone/asphalt shoulder - conversion to paved shoulder where ground disturbance is proposed
- Widening of shoulder (permanent)
- Replace impervious surfaces with permeable surfaces
- Upgrades to existing facilities to meet requirements for Americans with Disabilities Act (ADA)
- Reconstruct existing sidewalks and new or existing ADA ramps with more than 250 square feet of new imperviousness

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

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

### BRIDGES AND SMALL STRUCTURES

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

### STORMWATER MANAGEMENT (10% not required)

- Stormwater practices maintenance and enhancement with over 20,000 sq ft of cutting, clearing, or grubbing of woody vegetation within the existing footprint of the practice, including any maintenance easement for access to the practice.
  - Written justification is required for impacts in the Buffer outside of the existing footprint of the practice, or for cutting, clearing, or grubbing of woody vegetation outside of the existing footprint of the practice, 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 practice, to the Buffer or to woody vegetation outside the Buffer, shall be mitigated at 1:1.



- Install green infrastructure practices that 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
- Construction of new sediment control devices
- Erosion protection, including but not limited to, riprap installation for slope and/or channel protection

### 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. MDTA 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 additional project types.

#### 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;
  - Stream channel stabilization;
  - Weir or dam construction/removal;
  - Streetscaping with new lot coverage;
  - Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls or other related landscape stabilization and restoration techniques; and
  - Stream Restoration

#### Multi-Use Paths (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.

Solar or Photovoltaic Solar (PVS) System Installation (10% 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