

Critical Area Commission
STAFF REPORT

December 3, 2025

APPLICANT: Maryland Department of Transportation

PROPOSAL: Memorandum of Understanding

JURISDICTION: Maryland Department of Transportation

COMMISSION ACTION: Vote

STAFF RECOMMENDATION: Approval

STAFF: Jonathan Coplin

APPLICABLE LAW/ REGULATIONS: COMAR 27.02.05

DISCUSSION

The Maryland Department of Transportation (MDOT) is seeking approval for the repeal and replacement of the existing Memorandum of Understanding (MOU) between MDOT and the Critical Area Commission (CAC). The update includes replacing portions of Section 5, which allows for the establishment of a Model Ecosystem Mitigation Banking Program, and Section 9 regarding modifications/amendments to the MOU. A copy of the new 2025 MOU is attached to this staff report (see Attachment A).

Background

MDOT and CAC entered into a MOU originally in 2003 to define the process and procedures for reviewing MDOT development activities in the Critical Area. The 2003 MOU was later replaced with a 2019 MOU to ensure the review process and interactions between MDOT and CAC were up to date with current practices. The 2019 MOU was later amended in 2021 to add additional requirements related to hazardous substance notification and to allow for electronic signatures (see Attachment B).

The proposed 2025 MOU repeals and replaces the existing MOU to modernize procedures, clarify coordination expectations, and establish a more structured framework for mitigation banking and climate resiliency considerations.

Proposed Updates to the MDOT MOU

The proposed 2025 MOU maintains the fundamental intent of prior MOUs—to clarify how MDOT’s Modal Administrations (MA) conduct development activities within the Critical Area. The updated MOU will:

- Improves coordination and predictability in the review and approval of MDOT projects;
- Formalizes MDOT's Mitigation Banking Program, including the Model Mitigation Banking Framework (Exhibit B of the MOU (See Attachment C)) and corresponding MA specific banking agreements (Exhibit B1–B5);
- Provides updated terminology and clearer descriptions of roles and responsibilities throughout the planning, design, approval, and compliance processes; and
- Updates the administrative provisions to reflect current standards, including the 2021 MOU amendments for the allowance of electronic signatures and a more structured approach for modifying Exhibits and Attachments.

The existing MDOT MOU allows each MA to formulate an operational agreement with the CAC that details project coordination, the review and approval process, and the required mitigation for development activities within the Critical Area. The agreements are tailored to a specific MA and are assigned as follows:

- Exhibit A1: State Highway Administration (MDOT SHA)
- Exhibit A2: Maryland Aviation Administration (MDOT MAA)
- Exhibit A3: Maryland Transit Administration (MDOT MTA)
- Exhibit A4: Maryland Port Administration (MDOT MPA)
- Exhibit A5: Maryland Motor Vehicle Administration (MVA)

The 2025 MOU includes a complete Model Ecosystem Mitigation Banking Program (Exhibit B). Each MA must follow the process in Exhibit B to create its own Mitigation Banking Agreement (B1–B5). Maryland State Highway Administration will be the first MA to propose a mitigation banking program under Exhibit B1 to establish mitigation banks to fulfill Critical Area mitigation requirements.

Amendments to Section 5: Mitigation

The updates to this section highlight the collaboration between MDOT and CAC to create a Model Ecosystem Mitigation Banking Program that allows MAs to satisfy Critical Area mitigation requirements through the establishment of mitigation banks. This model is what the MAs will use as a framework to establish their own Mitigation Banking Agreements. This section also assigns each MA their own Exhibits for the Mitigation Banking Agreement that directly corresponds to their Exhibit A1 through A5 title. Each MA will be able to create individual Mitigation Banking Agreements that will be referenced within the MDOT MOU as follows:

- Exhibit B1: State Highway Administration (MDOT SHA)
- Exhibit B2: Maryland Aviation Administration (MDOT MAA)
- Exhibit B3: Maryland Transit Administration (MDOT MTA)
- Exhibit B4: Maryland Port Administration (MDOT MPA)
- Exhibit B5: Maryland Motor Vehicle Administration (MVA)

Amendments to Section 9: General Provisions

Section 9 of the 2025 MOU includes several structural, procedural, and legal updates that differ from the 2019 version. These changes clarify how Exhibits and Attachments may be created, modified, or replaced and include the 2021 amendments that modernize signature requirements.

Section 9.6 is a newly inserted section to clarify that the initial development and establishment of Exhibits A1-A5 and B1-B5 require review and approval by the full Critical Area Commission.

Section 9.7 was updated to clarify that minor amendments to existing Exhibits A1-A5 and B1-B5 (and all respective attachments) may be made when written consent is received from the respective MA and the CAC. Once minor modifications are finalized, the Commission Chair will update the full Commission on any amendments or modifications during the next Commission meeting. This process is currently not clearly described in the 2021 MOU.

Section 9.8 was updated to clarify that any *substantial modification*, including a repeal and replacement of Exhibits A1-A5 and B1-B5 and all respective attachments, requires written approval by the MA and CAC and approval by the full Commission. Both parties may propose substantial modifications to individual exhibits or attachments. These modifications do not require amendment of the MDOT MOU as a whole.

Reference Index:

The new 2025 MOU includes a reference index to identify the Exhibits incorporated in the MOU. The reference index provides a mechanism to track approvals and amendments for the individual MA Exhibit, and to provide an outline of the organization structure and components that support implantations of each MA's operational and mitigation banking agreements.

RECOMMENDATION

Commission staff recommend approval of the updated Memorandum of Understanding between Maryland Department of Transportation and Critical Area Commission.

Attachments:

- A. 2025 New MOU MDOT-CAC
- B. 2019 MOU MDOT-CAC with 2021 Amendments
- C. Exhibit B: Model Ecosystem Mitigation Banking Program Technical Guidance Document for Mitigation Banks

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on this ____ day of _____, 2025, by and between the MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT or the Department) and the CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS (the Commission), (collectively, “the Parties,” and either “a Party”).

RECITALS

WHEREAS, the Annotated Code of Maryland, Natural Resources Article §§ 8-1801 *et seq.* establishes the Commission and sets forth its duties and authority for implementing the State’s Critical Area Protection Program for the Chesapeake and Atlantic Coastal Bays;

WHEREAS, the Commission has established Regulations for development undertaken by State agencies in the Critical Area even though the development has not been approved by a local jurisdiction with an approved Critical Area Program;

WHEREAS, the Commission has authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands based on the Commission’s assessment of the extent to which the project conforms with COMAR 27.02.05, and to grant general approval for certain programs or classes of such activities, pursuant to COMAR 27.02.05.01.B;

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

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

WHEREAS, MDOT and the Commission originally entered into an MOU in 2003 that was replaced in 2019 by a new MOU (2019 MOU) which provided clarification of the terms and procedures by which MDOT would conduct development activities in the Critical Area as a way to ensure that any such activities were consistent with the Commission’s criteria;

WHEREAS, MDOT and the Commission have recognized the need to replace the 2019 MOU with this 2025 MOU to ensure that the interaction between the Parties related to development activities, procedures, and approvals are up-to-date and efficient; and

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

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

1 PURPOSE OF AND BACKGROUND:

- 1.1 The purpose of this MOU is to clarify the terms and procedures by which MDOT will conduct development activities in the Critical Area, including those that qualify for General Approval, and to ensure that any such activities are consistent with the Commission's criteria, including but not limited to criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake and Atlantic Coastal Bays. This MOU will also serve to improve the predictability of project mitigation needs and the expected results for mitigation, as well as the process for establishing MDOT mitigation banks as outlined in Section 5 below.
- 1.2 MDOT enters into this MOU on behalf of each Modal Administration (MA):
 - 1.2.1 State Highway Administration (Exhibit A1)
 - 1.2.2 Maryland Aviation Administration (Exhibit A2)
 - 1.2.3 Maryland Transit Administration (Exhibit A3)
 - 1.2.4 Maryland Port Administration (Exhibit A4)
 - 1.2.5 Motor Vehicle Administration (Exhibit A5)
- 1.3 This MOU addresses the following items:
 - 1.3.1 The process to be used by both parties in order for MDOT to gain General Approval of the Commission for projects in the Critical Area that are either maintenance activities or activities that are minor in size and/or scope (MOU Section 2);
 - 1.3.2 The responsibilities of both parties with regard to such General Approvals (MOU Sections 3 and 4); and
 - 1.3.3 The process to be used by both parties in order for MDOT and its MAs to gain approval of the Commission for establishing mitigation banks (MOU Section 5).

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

3 PROCESS: As described in this MOU and its Exhibits, the Commission agrees to provide a process that allows for minor development activities that meet specific thresholds or requirements to be reviewed by Commission staff. MDOT agrees to initiate early coordination and consultation with Commission staff on development projects to identify ways to minimize impacts and determine mitigation requirements. MDOT and the MAs will submit projects in accordance with the State Project Checklist, found on the Commission's website.

- 3.1 Upon issuance, MDOT shall provide the Commission with a copy of the current

approved Consolidated Transportation Program (the “CTP”).

- 3.2 As needed, each MA shall provide to the Commission a list of projects located in the Critical Area that are anticipated to reach final design phase during that fiscal year. Each MA list shall indicate for each project: (a) the project location; (b) whether the project is on State, local, or private land; (c) whether the project qualifies for General Approval or requires full Commission review; and (d) the project schedule, including advertisement date, date of project submittal, and date by which CAC approval is needed. As new projects are added for review, the list will be updated accordingly and made available to CAC.
- 3.3 Each MA shall update its list as projects are added or status changes.
- 3.4 Said List shall be for information only. Regardless of whether a project is included on a list or not, all projects in the Critical Area will follow the submission and approval processes outlined in this MOU and its Exhibits.
- 3.5 The MAs shall consult with the Commission during the planning and design stages of all projects subject to Commission review. The MAs shall invite Commission staff to inter-agency review sessions and to other meetings involving siting and impacts of projects in the Critical Area. The MAs shall send the Commission relevant environmental reports and documents that are distributed to other state agencies for review. Commission staff retain their right to contact the MAs directly to discuss and/or request additional information.
- 3.6 As part of the coordination between the MAs and Commission staff during the planning and design stages of all projects subject to Commission approval, MDOT commits to avoiding and minimizing adverse impacts to the Critical Area, including the Buffer and other habitat protection areas, to the maximum extent practicable.
- 3.7 When all information required by the Commission relevant to a MA is available, that MA shall submit to the Commission in accordance with this MOU and its corresponding Exhibit A1 – A5.
- 3.8 The Commission shall notify the MA of its decision to approve, deny, or approve with conditions the project according to COMAR 27.02.07.
- 3.9 The MA shall notify the Commission of any changes in the plans as approved, or of changes that occur during construction of the project, if these changes could affect fish, wildlife, or plant habitat, habitat protection areas under COMAR 27.02, water quality, and/or run-off to the Chesapeake Bay or the Atlantic Coastal Bays or their tidal tributaries. The MA Administrators shall afford Commission staff the opportunity to review any such changes and Commission staff shall make recommendations based on assessment of the extent to which the project conforms with COMAR 27.02.05.
- 3.10 The Commission shall notify the appropriate MA and the MDOT Representative on the Commission if the Commission becomes aware of an alleged violation of local, State, or

federal environmental laws or regulations including erosion and sediment control and stormwater management during construction or maintenance activities of any approved project. The MA shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until the problem is resolved.

- 3.11 Staff of the Commission and MDOT may meet on an as-needed basis to address issues such as the project design, project review process, project construction, and enforcement, including but not limited to standards for clearing and stabilization, sequencing of construction activities, off-site options for stormwater management quality control, water quality monitoring, or priorities for training. Visits to construction sites may be a part of the process as needed.
- 3.12 Each MA, when conducting development activities in the Critical Area, shall ensure that the MA complies with all applicable federal, State, and local requirements.
- 3.13. Each MA, when conducting development activities in the Critical Area, shall notify the Commission if the MA is or becomes aware of controlled hazardous substances or chemical contamination of soils or water and shall adhere to State water quality standards.

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

- 4.1 Emergency action projects involve situations and conditions that jeopardize public safety and welfare and require a MA to take immediate action in the form of development in the Critical Area. A MA may undertake the necessary remedial actions without prior Commission approval; however, each MA shall notify the Commission of the development activities as soon as possible and shall obtain Commission recommendation for any necessary actions to ensure compliance with the Critical Area Law. An emergency action includes those repairs that will prevent a threat to life, severe loss or damage to property, or an imminent threat to public safety or public works. Repairs should be limited to the extent warranted by the necessary remedial actions.
- 4.2 Priority projects may include both minor scale development projects of local significance (COMAR 27.02.02.01) and major development projects as discussed in COMAR 27.02.04.01. Priority projects may be reviewed and receive conditional approval from Commission Staff provided they meet the criteria as outlined in COMAR 27.02.06.01. MA requested priority process exceptions must include a memo, including the reason for the out-of-cycle project review (Governor's Priority, locally significant, budget constraints, etc.) and the anticipated timeline for project submittals and implementation. This memo should be addressed to the Commission Chair and come from either the State Secretary of Transportation, the Executive Director (Maryland Aviation Administration or Maryland Port Administration), or the Administrator (Maryland Transit Administration, State

Highway Administration or Motor Vehicle Administration) for the MA requesting the process exception.

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

5.1 **MITIGATION BANKING:** MDOT and the Commission have worked collaboratively to create a model Ecosystem Mitigation Banking Program to meet mitigation requirements; and commit the resources necessary to explore the identification and execution of this banking program. The Parties agree that MDOT and its MAs may create mitigation banks either by accumulating credits for providing environmental mitigation over and above the amount required by the Commission for a particular project or through the establishment of ecosystem banking areas.

5.2 The Model Mitigation Banking Program, attached hereto as Exhibit B, includes a detailed process for which the MAs shall follow for establishing individual Modal Administration Mitigation Banking Agreements.

5.3 If an MA develops a Mitigation Banking Agreement and upon approval of that Mitigation Banking Agreement by the Critical Area Commission, each MA's Mitigation Banking Agreement will be, attached hereto as follows:

- 5.3.1 State Highway Administration (Exhibit B1)
- 5.3.2 Maryland Aviation Administration (Exhibit B2)
- 5.3.3 Maryland Transit Administration (Exhibit B3)
- 5.3.4 Maryland Port Administration (Exhibit B4)
- 5.3.5 Motor Vehicle Administration (Exhibit B5)

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

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

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

MDOT:

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

For the Commission:

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

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

9 GENERAL PROVISIONS

- 9.1 **MERGER:** This Memorandum, and its Exhibits, and the Attachments to the Exhibits embody the whole agreement of the parties. There are no promises, terms, conditions or obligations referring to the subject matter other than those contained herein.
- 9.2 **TERMINATION:** A Party may terminate this MOU with written notice given 90 days in advance to the other Party. Any mitigation for projects approved under this MOU prior to termination shall be maintained and monitored according to the requirements of this MOU.
- 9.3 **AGENCIES HELD HARMLESS:** Subject to an appropriation by the Maryland General Assembly specifically for the purposes contemplated in this paragraph, MDOT agrees, to the fullest extent permitted by law, to indemnify and save harmless and defend the Commission and all of its employees, officials, and representatives from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work under this MOU, by MDOT or any subcontractor to MDOT, or the subcontractor's employees, agents, or representatives. This is not to be deemed as a waiver of any immunity which may exist in any action.
- 9.4 **RESOLUTION OF DISAGREEMENTS:** Should disagreements arise as to the interpretation of the provisions of this MOU, or subsequent 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 INITIAL ESTABLISHMENT OF EXHIBITS AND ATTACHMENTS: The Parties acknowledge and agree that the initial development and establishment of Exhibits A1 through A5, Exhibit B, and Exhibits B1 through B5, including all respective Attachments incorporated therein, require written approval of both Parties, and approval by the full Commission.
- 9.7 MINOR MODIFICATIONS TO EXHIBITS AND ATTACHMENTS: The Parties acknowledge that Exhibits A1 through A5, Exhibit B, and Exhibits B1 through B5, and all respective Attachments may require periodic updates based on experience during implementation of this MOU. Minor modifications to these Exhibits and Attachments may be approved by mutual written consent of the Points of Contact for each Party listed in Section 7, without requiring full Commission approval. For a modification to qualify as “minor,” both Parties must agree that it does not materially alter the substance, scope, or intent of the affected Exhibit or Attachment. The Commission Chair shall update all minor modifications to the Commission at the next regularly scheduled meeting following such modifications.
- 9.8 SUBSTANTIAL MODIFICATIONS TO EXHIBITS AND ATTACHMENTS: Any modification that does not qualify as minor under Section 9.7, including substantial changes to or repeal and replacement of any Exhibit or Attachment, requires written approval by both Parties and approval by the full Commission. The Parties may propose substantial modifications to individual Exhibits or Attachments separately or may propose modifications to multiple Exhibits or Attachments jointly, as circumstances require. Such modifications shall not require amendment of the MOU as a whole.
- 9.9 MARYLAND LAW PREVAILS: The MOU shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 9.10 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.
- 9.11 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

WITNESS

By: _____
Erik Fisher, CHAIR

MARYLAND DEPARTMENT OF TRANSPORTATION

WITNESS

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

Assistant Attorney General
Critical Area Commission

By:_____
Samantha J. Biddle
ACTING SECRETARY

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

Assistant Attorney General
Maryland Department of Transportation

EXHIBIT REFERENCE INDEX

(Applicable to the MDOT / Critical Area Commission Memorandum of Understanding)

This Reference Index identifies the Exhibits incorporated by reference into this Memorandum of Understanding including the Exhibit A Lists as referenced in Section 1.2, the Model Mitigation Banking Program – Exhibit B (referenced in Section 5), and the Exhibit B List as referenced in Section 5.3. It is intended to provide a mechanism to track approvals and amendments for the individual Modal Administration Exhibits, and to provide an outline of the organization structure and components that support implementation of each Modal Administration’s operational and mitigation banking agreements. Each Exhibit may include or reference supporting attachments as specified below.

EXHIBIT A LIST FOR MOU BETWEEN MDOT & COMMISSION Tracking Sheet		
<u>Document Title</u>	<u>Date of Approval</u>	<u>Date of Amendment</u>
Exhibit A1: State Highway Administration (MDOT SHA)		
Exhibit A2: Maryland Aviation Administration (MDOT MAA)		
Exhibit A3: Maryland Transit Administration (MDOT MTA)		
Exhibit A4: Maryland Port Administration (MDOT MPA)		
Exhibit A5: Maryland Motor Vehicle Administration (MVA)		

Attachments for Exhibit A List		
Exhibit	Modal Administration	Attachments
Exhibit A1	State Highway Administration	Attachment 1 – Technical Guidance Document
Exhibit A2	Maryland Aviation Administration (MDOT MAA)	Attachment 1 – Technical Guidance Document
Exhibit A3	Maryland Transit Administration (MDOT MTA)	Attachment 1 – Technical Guidance Document
Exhibit A4	Maryland Port Administration (MDOT MPA)	Attachment 1 – Definitions Attachment 2 – Designated Restoration Areas Attachment 3 – Vegetation Management Activities
Exhibit A5	Maryland Motor Vehicle Administration (MVA)	<i>[Reserved/TBD]</i>

EXHIBIT B LIST FOR MOU BETWEEN MDOT & COMMISSION <i>Tracking Sheet</i>		
<u>Document Title</u>	<u>Date of Approval</u>	<u>Date of Amendment</u>
Exhibit B: Model Mitigation Banking Program		
Exhibit B1: State Highway Administration (MDOT SHA)		
Exhibit B2: Maryland Aviation Administration (MDOT MAA)		
Exhibit A3: Maryland Transit Administration (MDOT MTA)		
Exhibit A4: Maryland Port Administration (MDOT MPA)		
Exhibit A5: Maryland Motor Vehicle Administration (MVA)		

Attachments for Exhibit B List		
Exhibit	Modal Administration	Exhibit with Attachments
Exhibit B	Model Mitigation Banking Program: (Note: Exhibit B applies to all MAs)	<u>Technical Guidance Document</u> Attachment 1: Site Analysis Attachment 2: Credit Approval Process Attachment 3: Planting Agreement Attachment 4: Annual Monitoring and Maintenance Attachment 5: Critical Area Mitigation Bank Ledger Attachment 6: Credit Release Form
Exhibit B1	State Highway Administration	<u>Technical Guidance Document</u> Attachment 1 – Site Analysis Process Attachment 2 – Credit Approval Process Attachment 3 – Planting Agreement Attachment 4 – Annual Monitoring and Maintenance Attachment 5 – Critical Area Mitigation Bank Ledger Attachment 6 – Credit Release Form
Exhibit B2	Maryland Aviation Administration (MDOT MAA)	[Reserved/TBD]
Exhibit B3	Maryland Transit Administration (MDOT MTA)	[Reserved/TBD]
Exhibit B4	Maryland Port Administration (MDOT MPA)	[Reserved/TBD]
Exhibit B5	Maryland Motor Vehicle Administration (MVA)	[Reserved/TBD]

ATTACHMENT B

MEMORANDUM OF UNDERSTANDING

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

RECITALS

WHEREAS, the Annotated Code of Maryland, Natural Resources Article §§ 8-1801 *et seq.* establishes the Commission and sets forth its duties and authority for implementing the State's Critical Area Protection Program for the Chesapeake and Atlantic Coastal Bays;

WHEREAS, the Commission has established Regulations for development undertaken by State agencies in the Critical Area even though the development has not been approved by a local jurisdiction with an approved Critical Area Program;

WHEREAS, the Commission has authority to approve, deny, or request modifications to State agency actions resulting in development on State-owned lands based on the Commission's assessment of the extent to which the project conforms with COMAR 27.02.05, and to grant general approval for certain programs or classes of such activities, pursuant to COMAR 27.02.05.01.B;

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

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

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

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

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

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

1 PURPOSE AND BACKGROUND:

1.1 The purpose of this MOU is to clarify the terms and procedures by which MDOT will conduct development activities in the Critical Area, including those that qualify for General Approval, and to ensure that any such activities are consistent with the Commission's criteria, including but not limited to criteria for protecting the water quality and plant and wildlife habitat of the Chesapeake and Atlantic Coastal Bays. This MOU will also serve to improve the predictability of project mitigation needs and the expected results for mitigation, as well as the process for establishing MDOT mitigation banks.

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

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

1.3 This MOU addresses the following items:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.10 The Commission shall notify the appropriate TBU and the MDOT Representative on the Commission if the Commission becomes aware of an alleged violation of local, State, or federal environmental laws or regulations, including erosion and sediment control and stormwater management during construction or maintenance activities of any approved project. The TBU shall in turn notify the appropriate state or local enforcement agency, and Commission staff will continue to be involved until the problem is resolved.

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

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

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

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

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

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

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

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

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

MDOT:

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

For the Commission:

Executive Director
Critical Area Commission
1804 West Street, Suite 100

Annapolis, MD 21401

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

9 GENERAL PROVISIONS

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

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

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

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

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

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

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

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

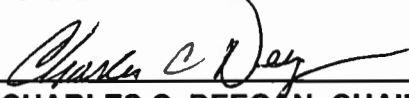
9.8 MARYLAND LAW PREVAILS: The MOU shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

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

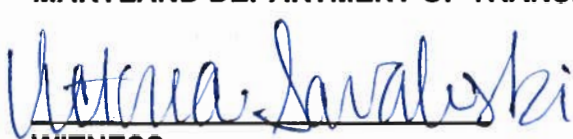
IN WITNESS WHEREOF, the parties have executed this Memorandum by causing the same to be signed as of the date first set forth above.

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS


WITNESS

By: 
CHARLES C. DEEGAN, CHAIRMAN


MARYLAND DEPARTMENT OF TRANSPORTATION



WITNESS

By: 
PETE K. RAHN, SECRETARY

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

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


Assistant Attorney General
Critical Area Commission


Assistant Attorney General
Maryland Department of Transportation

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

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

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

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

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

I. Process

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

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

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

II. Electronic Signatures

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

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

III. Scope of Amendment

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

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

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS:

Nick Kelly
WITNESS

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

Approved as to form and legal sufficiency:

Emily Vainieri
Assistant Attorney General
Critical Area Commission

MARYLAND DEPARTMENT OF TRANSPORTATION:

Sandra E. Herzig
WITNESS

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

Approved as to form and legal sufficiency:

Christopher L. Fontaine
Assistant Attorney General
Maryland Department of Transportation

EXHIBIT LIST FOR MOU BETWEEN MDOT & COMMISSION

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

ATTACHMENT C

EXHIBIT B: MODEL ECOSYSTEM MITIGATION BANKING PROGRAM TECHNICAL GUIDANCE DOCUMENT FOR MITIGATION BANKS

I. Introduction

This Model Ecosystem Mitigation Banking Program has been developed as **Exhibit B** to the 2025 Memorandum of Understanding (MOU) between the Maryland Department of Transportation (MDOT) and the Critical Area Commission (the Commission). The program is intended to provide clear guidance for the individual MDOT Modal Administrations in establishing mitigation banks to offset unavoidable impacts within the Critical Area.

Each MDOT Modal Administration (MA) may develop its own Mitigation Banking Exhibit using this Model Ecosystem Mitigation Banking Program as the foundation. The purpose of the individual Exhibits is to adapt the model framework to the specific operational context of each MA, while ensuring consistency with the terms of the amended 2025 MDOT–Critical Area Commission Memorandum of Understanding (MOU) and compliance with the applicable provisions of COMAR Title 27.

The development of each MA-specific Exhibit will occur in close coordination with Commission staff. Draft Exhibits must be submitted to the Critical Area Commission for review and approval prior to implementation. The Commission’s review will ensure that the process, terms, and conditions outlined in the MOU and this Exhibit B are properly incorporated, and that the proposed banking framework adequately addresses the requirements for Critical Area mitigation, including ecological function, habitat protection, and long-term management.

Once reviewed and approved, each MA’s Exhibit will be formally documented and appended to the MOU as follows:

- **Exhibit B1** – State Highway Administration
- **Exhibit B2** – Maryland Aviation Administration
- **Exhibit B3** – Maryland Transit Administration
- **Exhibit B4** – Maryland Port Administration
- **Exhibit B5** – Motor Vehicle Administration

These Exhibits will serve as binding guidance for the respective MAs, providing a consistent, transparent, and enforceable framework for mitigation banking activities to fulfill Critical Area mitigation requirements.

II. Adaptive Technical Guidance

The technical requirements and data/tools referenced in this document are subject to change as best available science and practices evolve. It is the shared goal of the Critical Area Commission (the Commission) and the Maryland Department of Transportation (MDOT) to maintain a guidance framework that both adheres to the Critical Area law and provides sufficient flexibility to meet mitigation requirements effectively.

This document is therefore intended to adapt over time as experience is gained and as new tools and methods become available. Any revisions to this document must be jointly approved by the Administrator of the applicable MDOT Modal Administration and the Executive Director of the Commission. All changes will be reported at the next regularly scheduled meeting of the Commission.

III. Mitigation Selection

Each Modal Administration (MA) shall, during project development, seek to avoid and minimize Critical Area impacts to the greatest extent practicable. Onsite mitigation shall be prioritized to ensure no net loss of forest coverage within the Critical Area of the jurisdiction in which the project occurs.

Where onsite mitigation is infeasible due to site constraints such as existing utilities, planned infrastructure improvements, right-of-way limitations, or safety and maintenance setbacks, MAs shall pursue mitigation in the following order of priority:

1. Mitigate within the Critical Area in the same jurisdiction and Maryland 8-Digit Watershed as the impact.
 2. Mitigate within the Critical Area on land owned by the jurisdiction through an executed agreement.
 3. Mitigate within the Critical Area and the same County as the impact.
 4. Provide fee-in-lieu payment to the respective jurisdiction, with assistance in site selection and planting plan development, if necessary.
 5. Mitigate through the use of an established and approved mitigation bank.
-

IV. Mitigation Banks

Purpose

Mitigation banking (MB) is a preferred mechanism for achieving timely, consolidated, and successful mitigation. MBs allow for:

- Consolidation of fragmented mitigation efforts into larger sites with enhanced ecological function.
- Reduction of lag time between impacts and mitigation.
- Increased likelihood of establishment success.
- Cost-effective mitigation for the public.

Establishment

An MA may propose an MB on land that offers targeted restoration opportunities identified through site analysis, internal evaluation, or in partnership with public/private entities. MBs must be located either:

- On land owned by the MA, or
- On land under a permanent conservation easement held by the MA or an approved third party.

Credits generated from MBs shall be based on areal extent rather than tree-for-tree replacement.

When an MA submits a project for review under the MOU for General Approval or for full Commission review, the project submittal must describe the method of mitigation (e.g., onsite planting, offsite planting, use of MB credits, etc.).

MBs will be prioritized for establishment within the Critical Area, or at alternative locations approved by Commission staff. 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 10% phosphorus removal requirements for projects: (1) when mitigation is either not feasible or cannot be fully accomplished onsite, (2) with anticipated future mitigation requirements, or (3) with outstanding mitigation requirements.

MBs can be established in cooperation with any public or private entity that is willing to enter into a legal agreement with the MA 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 MA, and the Commission.

Eligible Mitigation Needs

MBs may be created to offset:

- Forest/tree clearing in the Critical Area.
- Forest/tree clearing and ground disturbance in the Critical Area Buffer.
- Forest/tree clearing in Forest Interior Dwelling Bird Species (FIDS) habitat¹, as defined in *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area* (June 2000).
- The Critical Area 10% phosphorus removal for projects when the reduction requirements:
 - cannot be fully met onsite by proposed stormwater management treatment or a planting offset;
 - cannot be fully met offsite by proposed stormwater management treatment within the respective jurisdiction; or
 - cannot be met offsite by stormwater management treatment within the corresponding Maryland 8-Digit Watershed.

¹ To be considered FIDS habitat the following minimum sizes and configurations must be met: (a) forests of at least 50 acres in size with more than 10 acres or more of “Forest Interior” (i.e. forest greater than 300 feet from the nearest forest edge) or (b) riparian forests at least 50 acres in size with an average total width of 300 feet.

Required Components of MB Establishment

The establishment of a MB must include:

1. Selection of an appropriate location using ecological and opportunity evaluation tools.
2. Development of a credit and debit system (see Attachment 5: Critical Area MB Ledger).
3. Defined planting, maintenance, and monitoring requirements.
4. Legal protection in perpetuity.
5. Completion of all procedural steps and submittals required under the approval process.

Location Criteria

- MBs should be located within the Critical Area to maintain a minimum 1:1 replacement of forest coverage.
- For ≤ 5 individual tree removals, replacement shall occur at a 1:1 ratio.
- MBs outside the Critical Area may be considered if they maintain ecological connectivity to the Critical Area (e.g., riparian corridors, upland/wetland linkages, adjacent headwater areas).
- MBs should generally be ≥ 5 acres in size; smaller areas may be considered when providing Buffer mitigation, filling gaps in FIDS habitat, or addressing equity considerations.
- Preservation of existing forest habitat may be considered, provided 1:1 replacement is documented.

Additional siting considerations include:

- Benefits to overburdened and underserved communities.
- Potential resilience benefits related to climate change and nuisance flooding.
- Opportunities for Buffer planting.
- Presence of rare, threatened, or endangered species.
- Proximity to existing protected lands.
- Opportunities to enhance canopy continuity and wildlife corridors.
- Potential to assist in wetland or stream mitigation.

Service Areas

Service areas will be jointly determined by the MA and Commission staff and will generally include:

- The Critical Area of the County where the MB is located, and
- The Critical Area within the boundaries of the corresponding Federal HUC-8 watershed.

Credit System

1. Credits shall be determined based on areal extent (not tree-for-tree replacement) at a minimum 1:1 ratio.
2. Credits will be assessed in accordance with **Attachment 2: Credit Approval Process**.

3. Forest credits established outside the Critical Area Buffer will be used as non-Buffer forest mitigation credits and FIDS habitat mitigation credits as long as the minimum habitat defining criteria are met.
4. Forest credits established inside the Critical Area Buffer may be used as Buffer mitigation credits.
5. Credits on properties with multiple ecological features (for example, non-Buffer forest and Buffer) would be tracked separately according to parameters above.
6. Creation of additional ecological habitat (e.g., wetland migration corridors, pollinator habitat) may be credited on a case-by-case basis.
7. Preservation credits² may be considered only after the 1:1 replacement requirement is satisfied and will not exceed a 1:2 impact-to-credit ratio.
8. Credits will only be released following Commission staff approval of the **Attachment 6: Credit Release Form**.
 - a. Commission staff will issue notice of a credit release as credits become available from approved MBs. Credits may not be debited until the credits have been released.
 - b. Debiting of released credits will be considered only upon assurance of no net loss of forest coverage within the Critical Area of the County where the project impacts occur.

Planting Plan Requirements

- Site preparation techniques that include managing existing native vegetation and the removal of existing non-native and invasive species.
- Planting stock shall consist of native species of the Maryland Coastal Plain as listed by 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>.
- Planting plans must provide for biodiversity and layered forest structure (canopy, understory, shrub).
- Density must achieve ~400 woody stems/acre³.
- Invasive species must be aggressively controlled, per priority species listed in the 2010 *Plant Invaders of Mid-Atlantic Natural Areas* and the Maryland Invasive Species Council list.
- Monitoring is required for five years, with annual reports due to the Commission by March 1 using **Attachment 4**.
- A watering schedule should also be included in the planting plan.
- Mowing around trees should be included as necessary during the first two years.

² The MA must provide justification for the consideration of preservation credits and preservation credits will only be considered for forest not already permanently protected. Debiting preservation credits may be considered only after 1:1 forest replacement has been met for each project.

³ Generally, 400 woody stems per acre is the goal. This includes canopy trees, understory trees, and shrubs. No more than 10% of any individual woody layer (i.e., canopy trees, understory trees, shrubs) should consist of invasive species. The maximum threshold for invasive vines and invasive species in the herbaceous layer will be determined on a case by case basis.

- The removal tree tubes at an appropriate time to limit damage to trees, but no later than 5 years
- The replacement of dead trees, as necessary, to maintain 400 woody stems per acre.
- after planting.
- If natural regeneration will be used to meet the 400 woody stems per acre goal, this should be based on adjacent forest that would provide recruitment (as defined in COMAR 27.01.09.01-4) 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.

Monitoring and Maintenance

- MB plantings will be monitored by the MA for survival success for 5 years following planting. In addition, Commission staff may also inspect the plantings.
- The MA will submit a monitoring report (**Attachment 4: 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
- Final inspection will occur at year 5, with approval documented by Commission concurrence letter.
- Commission staff may adjust credits if performance standards are not met.
- Post-year-5 inspections will occur on a tiered schedule through perpetuity⁴.
- The individual MA Mitigation Banking Exhibits will include a process in that trees/vegetation is removed or impacted by natural events or emergencies.

Permanent Protection

- MBs must be permanently protected by conservation easement or restrictive covenant.
- Permitted land uses shall remain consistent with forest conservation and passive recreation⁵.
- Any future grading, clearing, or development activities on MB lands must be submitted for Commission review.

⁴ 1) Inspect the MBs annually from year 5 to year 10; 2) Inspect the MBs tri-annually from year 10 to year 25; and, 3) Inspect the MBs once every 5 years for year 25 and after.

⁵ 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 educational signage or fencing which may be used to mark boundaries. Any parking areas must be located outside the areas established for mitigation credit.

V. Submission Requirements

For MB site approval, MAs must submit, at a minimum:

- Cover letter signed by the MA Administrator.
 - Site address, tax map, parcel, lot number, and latitude/longitude.
 - GIS data (if available).
 - Mitigation Bank Submittal Report (**Attachment 1: Site Analysis**).
 - Site preparation plan as described in above.
 - Planting plan (including species key, botanical/common name, size/spacing, and quantities).
 - Signed Planting Agreement (**Attachment 3**).
 - Maintenance and monitoring plan.
 - Forest Stewardship Plan (if applicable).
 - Documentation of permanent protection (easement/restrictive covenant).
 - Executed MOU(s) with cooperating entities (if applicable).
-

VI. Attachments

- **Attachment 1:** Site Analysis Process for Mitigation Banks
- **Attachment 2:** Credit Approval Process for Mitigation Banks
- **Attachment 3:** Planting Agreement Template
- **Attachment 4:** Annual Monitoring and Maintenance Report Template
- **Attachment 5:** Critical Area Mitigation Bank Ledger Spreadsheet
- **Attachment 6:** Credit Release Form

