

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU), is entered into this ____ day of _____, 2021, (the “Effective Date”) by and between

The CRITICAL AREA COMMISSION for the CHESAPEAKE AND ATLANTIC COASTAL BAYS (the “Commission”),

The MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION (“MDOT MPA”),

and

The CHESAPEAKE BAY TRUST (the “Trust”).

I. RECITALS

WHEREAS, the Commission, MDOT MPA and the Trust share the common goal of improving water quality and wildlife habitat in the Chesapeake Bay and its watershed through installation of best management practices; and

WHEREAS, pursuant to the Annotated Code of Maryland, §8-1801, *et. seq.* of the Natural Resources Article, the Commission is responsible for implementing the State’s Critical Area Protection Program for the Chesapeake and the Atlantic Coastal Bays, including the authority to regulate State agency actions resulting in development or redevelopment of State-owned lands in the Critical Area; and

WHEREAS, pursuant to the Annotated Code of Maryland, §6-101, *et. seq.* of the Transportation Article, MDOT MPA is a Transportation Business Unit (TBU) of MDOT charged by the Maryland Legislature to increase waterborne commerce into and through the ports of the State of Maryland; and

WHEREAS, pursuant to Chesapeake Bay Critical Area Program regulations, certain MDOT MPA development and redevelopment projects must reduce water quality impacts associated with stormwater runoff and establish and protect vegetated buffer habitats; and

WHEREAS, MDOT entered into a Memorandum of Understanding with the Commission dated March 14, 2019 (the “MDOT-Commission MOU”) to clarify the terms and procedures by which MDOT and its TBUs would conduct development activities in the Critical Area, including but not limited to, pursuing innovative mitigation opportunities; and

WHEREAS, under the MDOT-Commission MOU, the Commission and MDOT MPA have developed an Exhibit specific to MDOT MPA that includes a fee-in-lieu program for MDOT MPA to provide mitigation for impacts in the Critical Area to be used for water quality and habitat offsets; and

WHEREAS, the Trust, a nonprofit entity established by the Maryland General Assembly pursuant to the Annotated Code of Maryland, § 8-1901, *et. seq.* of the Natural Resources Article in 1985 to promote public awareness and participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, is authorized to contract with other units of government, including the Commission and MDOT MPA; and

WHEREAS, the Trust has developed a grant management process and possesses the technical, financial, and managerial capacity to assist the Commission and MDOT MPA with the timely and appropriate commitment and expenditure of fee-in-lieu funds to expedite the implementation of environmental restoration projects to fulfill habitat and water quality mitigation for MDOT MPA's impacts in the Critical Area; and

WHEREAS, the Trust has grant programs that will target geographic areas of interest to the Commission and MDOT MPA for water quality and habitat improvements while using best practices to increase inclusion of individuals and groups from diverse backgrounds per the Trust's Diversity and Inclusion value in the Trust's strategic plan and guided by the Diversity and Inclusion Committee; and

WHEREAS, the Trust has a governance and oversight structure with formal representation from local government, State natural resource agencies, and the Maryland General Assembly, and utilizes independent technical review committees to review proposals and recommend awards made through its competitive grant programs; and

WHEREAS, the Commission and MDOT MPA have chosen the Trust, and the Trust has agreed to perform the work described herein and to be bound by the terms of this MOU; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

II. PURPOSE OF THE MOU

The purpose of this MOU is for the Trust to use its existing grant programs, or other similar programs, to expend MDOT MPA's fee-in-lieu mitigation funds ("MPA Mitigation Funds") to implement environmental restoration projects that will improve the water quality and aquatic and land habitats of the Chesapeake Bay and satisfy MDOT MPA's Critical Area mitigation requirements arising from MDOT MPA's development activities in the Critical Area.

III. ROLES AND RESPONSIBILITIES

A. MDOT MPA

1. MDOT MPA may provide MPA Mitigation Funds to the Trust in a manner acceptable to MDOT MPA and the Trust (i.e., check or ACH) for implementation of water quality and habitat protection offset projects to meet the mitigation requirements for specific MDOT MPA development and redevelopment projects with impacts in the Critical Area. If MDOT MPA elects to provide MPA Mitigation Funds to the Trust pursuant to this MOU, MPA Mitigation Funds will be transferred to the Trust prior to the start of construction of the MDOT MPA development and redevelopment projects with impacts in the Critical Area.
2. MDOT MPA shall track when MPA Mitigation Funds are transferred to the Trust and provide that information to the Commission in accordance with the requirements in MDOT MPA's Exhibit under the MDOT-Commission MOU.
3. MDOT MPA may participate on the Trust's Technical Review Committee for project selection as outlined in Appendix A, which is hereby incorporated into and made a part of this MOU.
4. MDOT MPA's responsibilities with respect to any water quality and habitat protection projects selected by the Trust for award under this MOU shall be strictly limited to the transfer of MPA Mitigation Funds to the Trust. The MDOT MPA shall not be responsible under this MOU for the administration of any Trust grant award or contracts arising from such grants, nor shall MDOT MPA be responsible for the design, construction, implementation, oversight, inspection, maintenance, or the successful completion of any water quality and habitat protection projects selected by the Trust and funded by MPA Mitigation Funds under this MOU. Following transfer of MPA Mitigation Funds to the Trust, MDOT MPA shall have no responsibilities, financial or otherwise, as to any projects funded under this MOU except the review of annual reports as set forth in Paragraph 5.
5. MDOT MPA shall receive from the Trust an annual report of the projects funded under this MOU as outlined in Appendix A. MDOT MPA will review these annual reports to ensure that the Trust is awarding MPA Mitigation Funds in a timely manner and consistent with the purposes of this MOU. If MDOT MPA determines that the Trust's awarding of MPA Mitigation Funds is inconsistent with this MOU, it shall notify the Parties in writing within 30 days and request a meeting to resolve the conflict.

B. CRITICAL AREA COMMISSION

1. In accordance with the process contained in Appendix A to this MOU, the Commission agrees to accept MDOT MPA's payment of the MPA Mitigation Funds to the Trust for water quality and habitat protection projects to satisfy MDOT MPA's mitigation requirements resulting from MDOT MPA's development and redevelopment activities in the Critical Area.
2. The Commission may participate on the Trust's Technical Review Committee and submit approval for project selection, if applicable, as outlined in Appendix A.
3. The Commission shall receive from the Trust an annual report of the projects funded

under this MOU as outlined in Appendix A. The Commission will review these annual reports to ensure that the Trust is awarding MPA Mitigation Funds in a timely manner and consistent with the purposes of this MOU. If the Commission determines that the Trust's awarding of MPA Mitigation Funds is inconsistent with this MOU, it shall notify the Parties in writing within 30 days and request a meeting to resolve the conflict.

C. CHESAPEAKE BAY TRUST

1. The Trust shall track MPA Mitigation Funds received from MDOT MPA and the Trust shall place the MPA Mitigation Funds in an account to be used solely for administering and awarding funding to Grantees.
2. The Trust shall use MPA Mitigation Funds in a timely manner, but will give consideration to identifying quality projects that are most likely to succeed.
3. The Trust shall be solely responsible for administration of any grants or contracts for the environmental restoration projects funded in whole or in part by MPA Mitigation Funds provided by the MDOT MPA under this MOU, including, but not limited to, all labor, equipment, outreach, and resources necessary for the design, construction, implementation, oversight, maintenance and successful completion of such project.
4. The Trust shall use the Community Engagement and Restoration mini-grant program, the Outreach and Restoration grant program, or similar programs as approved by all the Key Personnel listed in Section VI of this MOU to solicit and fund environmental restoration projects, as outlined in Appendix A.
5. The Trust shall invite the Commission and MDOT MPA to participate in any applicable Technical Review Committee and shall notify them of project approval, as outlined in Appendix A.
6. The Trust shall submit to MDOT MPA and the Commission an annual report of the projects funded under this MOU as outlined in Appendix A.
7. The Trust shall retain and maintain all records and documents relating to this MOU for three (3) years after completion of any Trust project funded by MPA Mitigation Funds or as required by any applicable statute of limitations, whichever is longer. Records and documents relating to this MOU shall include, but not be limited to, all documentation prepared by or for the Grantees.
8. The Trust shall make available for inspection all records and documents relating to this MOU upon request of the Commission or MDOT MPA. All records and documents relating to this MOU are subject to audit by the Commission or MDOT MPA or an authorized representative of the Commission or MDOT MPA. The Trust shall promptly grant access to its facilities to authorized Commission or MDOT MPA representative(s) for review of documents, information and interviews of Trust personnel. The Trust will provide to the Commission or MDOT MPA upon request copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for the Commission or MDOT MPA to comply with State or federal reporting and audit requirements.
9. For its services, the Trust shall be entitled to take an administrative fee. The Trust's

administrative fee will be paid out of the MPA Mitigation Funds provided by MDOT MPA, and may not exceed 10% of the total MPA Mitigation Funds.

IV. TERM AND RENEWAL

The MOU shall become effective on the Effective Date as set forth above and shall remain in full force and effect for a period of ten years, unless otherwise terminated in accordance with this MOU.

The term of this MOU may be extended by written agreement of all the Parties.

V. TERMINATION

Any Party may terminate this MOU with written notice given ninety (90) days in advance to all other Parties. Any unencumbered MPA Mitigation Funds will be returned to the MDOT MPA within sixty days (60) of the termination date.

VI. KEY PERSONNEL

The Parties agree that the following named individuals are considered to be essential to the work being performed hereunder and shall have authority to act under this MOU for their respective Parties:

MDOT MPA:	Jeffrey E. Neumayer, PE Division of Engineering (410) 385-4810 jneumayer@marylandports.com
MDOT MPA:	Amanda Peñafiel Office of Harbor Development (410) 385-4470 apenafiel@marylandports.com
Commission:	Jennifer Esposito Natural Resources Planner (410) 260-3468 jennifer.esposito@maryland.gov
Trust:	Sadie Drescher Director, Restoration Programs (410) 974-2941 x105 sdrescher@cbtrust.org

Should these individuals become unavailable during the period of performance, personnel of equivalent capability shall be assigned to complete the work under this MOU.

VII. GENERAL PROVISIONS

A. **NON-EXCLUSIVITY.** The Trust shall retain the right to accept funding from other sources for the environmental restoration projects. MDOT MPA shall retain the right to use alternative best management practices other than Trust projects to fulfill its Critical Area Program regulatory requirements.

B. **INDEMNIFICATION.** Recognizing that the Trust is a government agency and, as such, is subject to limitations on the indemnity that it can legally provide, the Trust agrees, to the extent permitted by the Maryland Tort Claims Act, Maryland Code, State Government Article, Section 12-101 *et. seq.*, subject to the availability of appropriations, and the fullest extent permitted by law, to indemnify, defend, and hold harmless the Commission and MDOT MPA, their officers, directors, agents and employees 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 performed under this MOU, either by the Trust or any subcontractor, or their employees, agents, or representatives. This is not deemed as a waiver of any immunity which may exist in any action. The Commission and MDOT MPA do not waive any right or defense, or forebear any action, in connection herewith.

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

D. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this MOU shall be construed to: (1) provide a benefit to any third-party; (2) operate in any way as a promise, covenant, warranty, or other assurance to any third-party; or (3) create any obligation to any third party.

E. **AMENDMENTS TO MOU.** This MOU may not be amended or modified except with the written agreement of all the Parties.

F. **AMENDMENTS TO APPENDIX A.** The Parties acknowledge and agree that Appendix A is the result of a joint effort by the Parties. Because Appendix A is intended to be a working document that may evolve over time, the Parties agree that Appendix A may be amended periodically, but not more frequently than once every six months, with the written agreement of all the Key Personnel listed in Section VI of this MOU. The Commission Chairman will update the Commission of any amendments or modifications to Appendix A at the next Commission meeting following the agreed-to amendment or modification.

G. **MARYLAND LAW PREVAILS.** This MOU shall be governed by and construed under the laws of the State of Maryland.

H. **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.

I. **MERGER.** This MOU, all appendices and approved modifications hereto (hereinafter referred to collectively as “MOU Documents”), embody the entire MOU of the Parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

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

IN WITNESS WHEREOF, the Parties have executed this MOU by causing the same to be signed by their duly authorized representatives on the day and year first above written.

WITNESS

CRITICAL AREA COMMISSION FOR
THE CHESAPEAKE AND ATLANTIC
COASTAL BAYS

By: _____
Charles C. Deegan, Chairman

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Assistant Attorney General for the Critical
Area Commission for the Chesapeake and
Atlantic Coastal Bays

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WITNESS

MARYLAND DEPARTMENT OF
TRANSPORTATION MARYLAND PORT
ADMINISTRATION

By: _____
Brian Miller, Deputy Executive Director

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Assistant Attorney General for the Maryland
Department of Transportation Maryland Port
Administration

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WITNESS

CHESAPEAKE BAY TRUST

By: _____

Jana Davis, Executive Director

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APPENDIX A SCOPE OF WORK

I. Project Goal

The purpose of this MOU is for the Trust to use its existing grant programs, or other similar programs, to expend MDOT MPA's fee-in-lieu mitigation funds ("MPA Mitigation Funds") to implement environmental restoration projects that will improve the water quality and aquatic and land habitats of the Chesapeake Bay and satisfy MDOT MPA's Critical Area mitigation requirements arising from MDOT MPA's development activities in the Critical Area.

II. Scope of Work

The Trust shall solicit eligible environmental restoration projects in accordance with the Request for Proposals (RFPs) established for the Community Engagement and Restoration mini grant program, the Outreach and Restoration grant program, or similar programs as approved by all the Key Personnel listed in Section VI of this MOU. The Trust shall administer MPA Mitigation Funds received from the MDOT MPA to awardees in accordance with the Trust's standard operating procedures and pro-forma award agreement.

Eligible project types include, but are not limited to:

- Restoration projects such as rain gardens, conservation landscaping, and tree planting;
- Community garden;
- Pollinator garden;
- Protecting open space;
- Converting vacant lot to green space; and
- Outreach and engagement with hands-on habitat and/or water quality components.

Eligible projects shall be targeted to Baltimore City, southeast and southwest Baltimore County, or Anne Arundel County north of Route 100.

Eligible project applications shall include 1) property owner approval and 2) long-term (~2-5 years) maintenance and protection of the site.

Eligible projects shall be approved and managed per the following processes:

A. Community Engagement and Restoration Mini Grant Program or Similar Programs

1. The Trust will serve as the lead on RFP outreach, project solicitation, and technical assistance to potential applicants.
2. The Trust will use its existing system of online grant applications to electronically receive proposals.

3. All awards will be made through a competitive process developed by the Trust.
4. The Trust will manage tasks such as distribution of funds, phasing awards, reviewing award revisions, reviewing status reports, managing budgets, reviewing final award reports, and documenting project information.
5. The Trust will provide MDOT MPA and the Commission with an annual report by January 15 for the previous calendar year on the status of funds encumbered, funds available as yet unencumbered, and all projects planned and implemented pursuant to this MOU.

B. Outreach and Restoration Grant Program or Similar Programs

1. The Trust will serve as the lead on RFP outreach, project solicitation, and technical assistance to potential applicants.
2. The Trust will use its existing system of online grant applications to electronically receive proposals.
3. Representatives from MDOT MPA and the Commission may participate on the Trust's established Technical Review Committee to evaluate proposals and make the best determinations for awards.
4. For projects costing \$100,000 or more, the Trust will coordinate with the Commission to ensure that specific habitat and water quality goals and the long-term maintenance and monitoring requirements of a project are deemed acceptable.
5. The Commission will submit approval of the final slate of awards via electronic communication from the Key Staff identified in this MOU or his/her designee.
6. The Trust will manage tasks such as distribution of funds, phasing awards, reviewing award revisions, reviewing status reports, managing budgets, reviewing final award reports, and documenting project information.
7. The Trust will provide MDOT MPA and the Commission with an annual report by January 15 for the previous calendar year on the status of funds encumbered, funds available as yet unencumbered, and all projects planned and implemented pursuant to this MOU.