

Critical Area Commission

STAFF REPORT

October 5, 2022

APPLICANT: St. Mary's College of Maryland (SMCM)

PROPOSAL: SMCM Memorandum of Understanding (MOU)

COMMISSION ACTION: Vote

STAFF: Susan Makhoulf

STAFF RECOMMENDATION: Approval

**APPLICABLE LAW/
REGULATIONS:** COMAR 27.02.03 General Approval of State and Local Agency Programs Which Result in Development of Local Significance on Private Lands or Lands Owned by Local Jurisdictions

DISCUSSION

St. Mary's College of Maryland (SMCM) proposes to update the existing Memorandum of Understanding (MOU) between SMCM and the Critical Area Commission. The purpose of the MOU is to provide a streamlined process for the review of specific maintenance and redevelopment actions by allowing Critical Area Commission (CAC) staff to conduct necessary project review and approvals in lieu of a Commission vote.

COMAR 27.02.03 provides the Commission the authority to enter into such agreements, provided the MOU describes a process by which the classes of activities will conform with Critical Area requirements. The current MOU between the two agencies was signed in 2011. The goal for the updated MOU between SMCM and the Commission is to incorporate new requirements and improve the review process for SMCM projects. To that end, the updates will encompass additional project types and will be more in line with other State Agency MOUs. This update will include Exhibit A and Attachments 1, 2, and 3. The MOU, Exhibit A and Attachments 1, 2, and 3 are attached for reference.

Background

SMCM is a public institution of higher learning located in St. Mary's County along the St. Mary's River and adjacent to Historic St. Mary's City (HSMC). The school was founded in 1840 and was incorporated by an act of legislation in 1846. In 1992, the Maryland legislature designated SMCM the state's public honors college. The college shares land with HSMC and the campus and HSMC together are considered one of the most important archaeological sites in the United States, with the archeological record spanning more than 10,000 years of human occupation. The land is the ancestral home of the Yacocomico and Piscataway Peoples and the place where people of African ancestry who were forced from their homes and transported across the Atlantic

Ocean lived as enslaved people. The land is now owned by the State of Maryland and governed by the SMCM Board of Trustees.

The SMCM campus encompasses 360 acres including waterfront areas along the St. Mary's River. The state-owned property includes land area, infrastructure, utilities, and facilities located within Maryland's Critical Area on lands designated as Intensely Developed Area (IDA) and Resource Conservation Area (RCA). Potential impacts to the Critical Area from the restoration, maintenance, or construction of SMCM facilities require appropriate measures to manage, offset, and mitigate in a consistent and uniform manner.

STRUCTURE OF THE MOU

The purpose of this MOU is to provide a mechanism for such actions and necessary mitigation, while keeping project review at a staff level for maintenance and minor development activities. Should an activity exceed the parameters outlined in the MOU, Commission staff shall direct SMCM to submit for full review and approval by the Commission under COMAR 27.02.05. The MOU is the legal agreement between SMCM and CAC and includes each party's roles and responsibilities. Exhibit A and Attachments 1, 2, and 3 are discussed in more detail below.

Mitigation

In an effort to improve the quality of and the benefits from Critical Area mitigation for SMCM projects, the MOU includes guidance regarding stormwater management (SWM) and Buffer mitigation. SMCM is limited in its ability to provide SWM and Buffer mitigation due to the presence of archaeological resources. Attachment 1 to Exhibit A: Mitigation provides more specifics related to how mitigation may be met and is discussed in more detail below. The updated MOU can be revised in the future to include suitable potential mitigation areas. All proposed mitigation areas require review by Commission staff.

Climate Resiliency

In order to address the climate resiliency requirements of COMAR 27.02.05, this updated MOU includes an acknowledgement from SMCM that State Agencies are required to consult with the Commission early in the project planning process to assess climate resilient practices that address coastal hazards, extreme weather events, sea level rise, and other impacts. It also includes a commitment from SMCM that each Class II or Commission level project will be reviewed according to the procedures included in Attachment 2 to Exhibit A: Site-Wide Climate Resiliency Assessment, discussed in more detail below.

Reporting Requirements

On March 1st of each year, SMCM shall provide the Chair of the Commission with a report on those projects that were reviewed under Class I the prior calendar year. Mitigation requirements will be tracked in an ongoing effort, with the spreadsheet in Attachment 3 to be kept up to date by SMCM and sent to CAC staff in the annual report for Class I projects.

Comprehensive Review

The MOU and its Exhibits may not be amended or modified except with written consent of both Parties. Any changes to the MOU itself will require full Commission approval. The Exhibits and their Attachments may be amended periodically with written consent of the Points of Contact listed in the MOU. The Commission Chairman will update the Commission on any amendments or modifications to the Exhibits and their Attachments at the meeting following the agreed upon changes. Once approved, the MOU shall remain in full force and effect for a period of ten (10) years, unless otherwise terminated in accordance with the provisions stipulated in the MOU.

Exhibit A: Conditions for General Approval

The specific project review parameters are outlined in Exhibit A as either a Class I or Class II activity. Class I activities allow for maintenance or minor improvements of existing facilities and roads, landscape projects, fencing, and other activities that are minor in scope and/or return a site to a naturalized state. Instead of Commission staff reviewing each individual project, SMCM shall submit an annual report of Class I projects and will note any tree clearing and required mitigation. No more than 5 trees may be removed for each project and every tree removed must be replaced with one native tree (minimum size ¾-inch caliper). Trees removed from the Buffer must be replanted within the Buffer. If removal of more than 5 trees is required, or if trees cannot be replaced within the Buffer, the project must be submitted to Commission staff for review and approval under Class II, including a justification for the removal of trees or an alternative planting location. The types of activities eligible for review as a Class I project are included in Section 2.2 of Exhibit A, which begins on page 9 of the MOU. By way of example, activities such as fencing, stormwater facility maintenance, and invasive species management are included.

Class II projects include new minor development activities as well as development activities that may change 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 in the Exhibit relate to impacts within the Critical Area only, and Critical Area 10% phosphorus reduction requirements will be determined on a case-by-case basis. The qualifying parameters state that no impacts to Habitat Protection Areas (HPAs) other than the Buffer may occur unless minor in scope or consistent with COMAR Title 27. Class II projects have established thresholds for forest/developed woodland clearing limits, must provide appropriate mitigation for any clearing, and must minimize disturbance to the Buffer. New structures cannot exceed 2,000 sf of lot coverage and expansion/replacement of existing structures cannot have a net increase in lot coverage that exceeds 1,000 sf. The types of activities eligible for review as a Class II project are included in Section 3.2 of Exhibit A, which begins on page 12 of the MOU. By way of example, activities such as new buildings and structures, installation of new utility lines, and restoration projects are included. The project thresholds in the updated MOU are somewhat larger than the thresholds included in the existing MOU and the types of projects eligible for review has been expanded to include restoration projects.

In addition, SMCM will review Class II projects for coastal vulnerabilities using the procedures outlined in Attachment 2: Site-Wide Climate Resiliency Assessment. If coastal hazards are identified, SMCM will identify and incorporate climate resilient practices. Projects may be

permitted to exceed certain parameters under Class II of the MOU, provided SMCM submits justification for the exceedance. Critical Area staff will evaluate the submittal and determine if the project fits the intent of the MOU or requires full Commission approval. Activities that impact a medium or high priority wetland adaptation area may not be reviewed under this MOU and will require review by the full Commission.

Attachment 1 to Exhibit A: Mitigation

The Commission and SMCM worked together to standardize mitigation requirements that recognize the unique needs and constraints of SMCM, while at the same time complying with Critical Area regulations. This collaboration resulted in Attachment 1: Mitigation, which includes guidance related to SWM and a Master Buffer Management Plan (BMP). The SWM section includes a list of SWM best management practices (BMPs) that may be more suitable for historic sites, given the constraints with ground disturbance potentially impacting archaeological resources. The Master BMP includes general mitigation guidance and identifies several specific uses allowed within the Buffer at SMCM including public access areas and existing viewsheds.

Attachment 2 to Exhibit A: Site-Wide Climate Resiliency Assessment

SMCM will use the procedures included in Attachment 2: Site-Wide Climate Resiliency Assessment to determine whether a proposed project is located within a vulnerable area. If a Class II project is located in a vulnerable area, SMCM will follow the guidance outlined in Attachment 2. SMCM is also required to review all applicable capital projects in accordance with the Coast Smart Construction Program guidance, as amended, to ensure avoidance and minimization of impacts to SMCM projects in vulnerable locations.

Attachment 3 to Exhibit A: Tracking Spreadsheets

Attachment 3 includes two (2) tracking spreadsheets. The first spreadsheet tracks Class I projects for annual reporting and includes columns that correspond to the items listed in Section 2.1 Reporting Requirements of the MOU. The second spreadsheet tracks mitigation for projects with mitigation requirements. The spreadsheets will assist with the preparation of the annual report for Class I projects and enable mitigation requirements to be tracked and monitored.

RECOMMENDATION

Commission staff recommends approval of the SMCM Memorandum of Understanding.

**MEMORANDUM OF UNDERSTANDING
BETWEEN ST. MARY’S COLLEGE OF MARYLAND AND THE CRITICAL AREA
COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS**

This Memorandum of Understanding (MOU) is entered into as of _____ 2022 by and between St. Mary’s College of Maryland (SMCM) and the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CAC or the Commission).

1 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, including the authority to regulate State agency actions resulting in development or redevelopment on State-owned lands in the Critical Area; and

WHEREAS, pursuant to COMAR 27.02.05, the Commission is responsible for ensuring that disturbance on State-owned land in the Critical Area is minimized and work performed in a manner most protective to the environment; and

WHEREAS, the Commission is authorized under COMAR 27.02.03 to grant a General Approval to State agencies for certain classes of development activities in the Critical Area; and

WHEREAS, SMCM is an agency of the State of Maryland with land area, infrastructure, utilities, and facilities located within the Critical Area and, therefore, required to comply with Maryland’s Critical Area Program; and

WHEREAS, SMCM must be able to restore, maintain, and construct a wide variety of SMCM facilities and conduct activities that may result in impact to the Critical Area and SMCM recognizes that such anticipated Critical Area impacts require appropriate measures to manage, offset, and mitigate for any such occurrences; and

WHEREAS, SMCM and the Commission desire to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries and to provide mitigation that enhances the quality and surrounding habitat productivity of these waters; and

WHEREAS, SMCM commits to avoiding and minimizing adverse impacts to the Critical Area, including the Buffer and other habitat protection areas, to the maximum extent practicable.

NOW, THEREFORE, SMCM and the Commission hereby agree to the following:

2 PURPOSE OF THE MOU

The purpose of this MOU is to establish a modified project review and approval process consistent with COMAR 27.02.03. Under this process, certain types of projects will be reviewed

internally by SMCM staff or cooperatively reviewed and approved by Commission staff as an alternative to review and approval by the full Commission. This project review and approval process is set forth in detail in Exhibit A, which is incorporated into and made a part of this MOU.

3 SMCM'S ROLES AND RESPONSIBILITIES

3.1 SMCM shall be responsible for coordinating the review of all SMCM projects located in the Critical Area on lands owned/managed by SMCM with Critical Area Commission staff, as outlined in this MOU, regardless of the procurement process followed or funding source for the project. SMCM shall not delegate responsibility for Critical Area review to any other entity, including project engineers, designers, or any other State agency (e.g., Department of General Services), unless notification is made in writing to the CAC prior to the start of the project.

3.2 In accordance with the procedures set forth in Exhibit A, SMCM shall be responsible for submitting project notification and project plans to Commission staff and for implementing any measures necessary to satisfy the regulatory requirements of the Critical Area Program.

3.3 SMCM shall inform Commission staff of every Class II project during the planning and design stage, and shall include Commission staff as requested in meetings and field visits.

3.4 When all information required by the Commission is available, SMCM shall submit to Commission staff in accordance with this MOU.

3.5 SMCM shall notify Commission staff of any changes to the approved plans, or of changes that occur during construction of the project and afford Commission staff the opportunity to review any such changes. Certain changes may be submitted to the full Commission for review and approval.

3.6 SMCM shall be responsible for obtaining any other approvals, authorizations, licenses, or permits from other local, State and federal agencies and for meeting any other regulatory requirements associated with restoration, maintenance and development projects covered by this MOU.

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

4 COMMISSION'S ROLES AND RESPONSIBILITIES

4.1 In accordance with the procedures set forth in Exhibit A, Commission staff agrees to accept the reports, notifications, and project documents submitted by SMCM and to provide a response within 15 business days indicating whether or not staff concurs that the project qualifies for review under this MOU.

4.2 Upon determination by the Commission that a complete application has been submitted, Commission staff shall notify SMCM of its decision to approve, deny, or approve with conditions the project within 30 calendar days.

4.3 If SMCM notifies Commission staff of any changes for an approved plan, Commission staff shall review and respond within the required timeframes and make recommendations based on assessment of the extent to which the project conforms with COMAR 27.02.05. Commission staff may require proposed changes be submitted for review and approval by the full Commission.

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

5 TERM

This MOU shall become effective on the date upon execution by all Parties and shall remain in full force and effect for a period of ten years, unless otherwise terminated in accordance with this MOU. The term of this MOU may be extended by written agreement of both Parties.

6 MITIGATION

The Commission and SMCM worked together to standardize mitigation requirements and identify mitigation opportunities that recognize the unique needs and constraints of SMCM. This includes the need to minimize impacts to existing archaeological resources and the necessity to upgrade or repair existing development/facilities, including within the Buffer. The Commission collaborated with SMCM to establish guidelines/guidance for stormwater management mitigation including identifying appropriate and feasible SWM BMPs. The mitigation guidance, including the Master Buffer Management Plan, is set forth in Exhibit A's Attachment 1: Mitigation.

7 CLIMATE RESILIENCY

SMCM acknowledges that, per COMAR 27.02.05.02A(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 for all Class II projects. SMCM will use the site-wide climate resiliency analysis in Attachment 2: Site-Wide Climate Resiliency Assessment to Exhibit A of this MOU to determine whether a proposed project is located within a vulnerable area. If a Class II project is located in a vulnerable area, SMCM will follow the process/procedures outlined in Attachment 2. Additionally, SMCM reviews all applicable capital projects in accordance with the Coast

Smart Construction Program guidance, as amended, to ensure avoidance and minimization of impacts to or from SMCM projects in vulnerable locations.

8 ACCOUNTING AND REPORTING

SMCM shall maintain a database to track the outstanding requirements for any project where required planting associated with afforestation, reforestation, Buffer mitigation, or Buffer establishment is not implemented on the project site at the time of construction. The database shall be updated when the planting is accomplished. The status of any outstanding planting requirements shall be reported to the Commission in the annual report.

9 POINTS OF CONTACT

All communication related to this MOU shall be directed to:

For SMCM: Paul Pusecker, Vice President for Business & Chief Financial Officer, St. Mary's College of Maryland, Office of Facilities, 18952 East Fisher Road, St. Mary's City, MD 20686-3001. Phone: 240-895-4413, Fax: 240-895-4409, E-mail: papusecker@smcm.edu

For the Commission: Katherine Charbonneau, Executive Director, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401. Phone: 410-260-3475, Fax: 410-974-5338, Email: katherine.charbonneau@maryland.gov

10 GENERAL PROVISIONS

10.1 **MERGER:** This Memorandum, 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.

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

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

10.4 **RESOLUTION OF DISAGREEMENTS:** Should disagreements arise as to the interpretation of the provisions of this MOU, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement will be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not

reached within 30 days, the Parties shall forward the written presentation of the disagreement to a higher official in each agency for appropriate resolution.

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

10.6 AMENDMENTS TO EXHIBITS AND THEIR ATTACHMENTS: The Parties acknowledge and agree that the Exhibits and their Attachments are the result of a joint effort by the Parties. Because these Exhibits and their Attachments may evolve with gained experience during implementation of the MOU, the Parties agree that the Exhibits and their Attachments may be amended periodically with the written consent of the Points of Contact for each Party listed above in Section 8. 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.

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

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

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

REST OF PAGE
INTENTIONALLY LEFT
BLANK

IN WITNESS WHEREOF, the parties have executed this MOU 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

ST. MARY'S COLLEGE OF MARYLAND

WITNESS

By: _____
Paul Pusecker, Vice President

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Emily Vainieri
Assistant Attorney General
Critical Area Commission

Allison Boyle
Assistant Attorney General
St. Mary's College of Maryland

REST OF PAGE
INTENTIONALLY LEFT
BLANK

Table of Contents for Exhibit A

1.0 Conditions for General Approval of SMCM Projects	8
2.0 Class I: Annually Reported Activities.....	8
2.1 Reporting Requirements	8
2.2 Class I Activities	9
3.0 Class II: Activities Requiring Prior Approval	10
3.1 Qualifying Parameters	10
3.2 Eligible Projects	12
3.3 Project Submittal Requirements	13
Attachment 1: Mitigation	14
Stormwater Management	14
Master Buffer Management Plan	15
Mitigation Ratios.....	15
General Mitigation Guidance	15
Buffer Use Categories.....	15
Attachment 1 Maps	17
Attachment 2: Site-Wide Climate Resiliency Assessment.....	18
Background	21
Procedures	19
Historical Sites and Structures.....	20
Nonhistorical Sites and Structures.....	20
Attachment 2 Maps	21
Attachment 3: Tracking Spreadsheets	23

EXHIBIT A

1.0 Conditions for General Approval of St. Mary's College of Maryland Projects

Under COMAR 27.02.05, State Agency Actions Resulting in Development on State-Owned Lands, the Critical Area Commission (CAC or 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 a general approval by the Commission allows implementation of the approved program, activity or project in accordance with the policies and requirements as set forth in COMAR 27.02.05.

For all projects subject to this General Approval, St. Mary's College of Maryland (SMCM) shall fulfill all applicable federal and State permitting requirements. Exemptions, variances, and waivers granted by other agencies are separate from the requirements of the Critical Area law and criteria and shall not be considered to lessen or alter the requirements of this General Approval.

For the purposes of this General Approval, permitted activities within the Critical Area are divided into two classes: Class I: Annually Reported Activities and Class II: Activities Requiring Prior Approval. In addition to satisfying all requirements of COMAR 27.02.05, projects proposed for General Approval must meet the following conditions according to project Class as defined below.

2.0 CLASS I: ANNUALLY REPORTED ACTIVITIES

Annually reported activities include those which are minor in scope, involve maintenance of existing facilities, and/or return a site to a naturalized state. Any project that qualifies under Class I is permitted in all Critical Area designations and within the Buffer. Projects that qualify under Class I do not require Critical Area 10% stormwater management; nor do they require a climate resiliency assessment. Class I projects require notification to Commission staff annually. No more than five (5) trees may be removed for each project and every tree removed must be replaced with one native tree (minimum size ¾-inch caliper). Trees removed from the Buffer must be replanted within the Buffer. If more than five (5) trees are required to be removed, the project must be submitted to Commission staff for review and approval under Class II.

SMCM shall be responsible for obtaining any other approvals, authorizations, licenses, or permits from other local, State and federal agencies and for meeting any other regulatory requirements associated with restoration, maintenance and development projects covered by this MOU.

2.1 Reporting Requirements

On March 1st of each year, SMCM shall provide the Commission with a report on those projects that were reviewed under Class I the prior calendar year. Exhibit A's Attachment 3: SMCM Tracking Spreadsheet, as updated by CAC staff and edited by SMCM staff, will be used to prepare the annual report. The annual report shall include:

- The project's name;
- The project's location;
- Project description including amount of new lot coverage if any;
- The proposed amount of clearing;
- Area of Buffer disturbed and/or cleared;
- Mitigation calculations and location of plantings; and
- If planting is deferred until a later date, the reason for the deferral and the anticipated planting date.

2.2 Class I Activities

- Beach maintenance, clean-up, or replenishment
- Removal of hazardous trees (defined as dead, diseased or dying trees that are in danger of causing injury to people, damage to property or accelerating shoreline erosion)
- Tree planting
- Invasive species management, including phragmites control
- Special events provided that SMCM minimizes the length of time that structures remain and restores the site to previous conditions. If any areas covered by temporary structures suffer vegetation die-off, they must be revegetated; and impacts to the Critical Area Buffer must be minimized including no vegetation removal for temporary structures.
- Archaeological activities as identified by the HSMCC Research Department
- Patching, resurfacing and/or milling of roadways (including potholes and malfunctioning joints), intersections, bicycle facilities, parking lots, sidewalks, trails or paths where the drainage pattern is not changing per MDE Technical Memorandum #4 (i.e., the grade, line, and cross section of the original pavement must be maintained). Please note that Technical Memorandum #4 requires a project to be submitted to MDE in order for MDE to determine whether the project qualifies for a waiver to the stormwater requirement.
- Maintenance of natural surface trails and paths including minor filling or minor rerouting. Minor rerouting cannot involve the clearing of more than 5 trees.
- Replacement of existing signs or new signs outside the Buffer
- Fencing
- Landscape planting and landscape maintenance for existing facilities and/or to fulfill objectives of beautification programs
- Footbridge, pier, boardwalk, or stair redecking
- Minor rehabilitation of bridges, piers, and boardwalks, including repair of culverts and headwalls
- Maintenance, repair, or renovation of existing stormwater management facilities that does not involve any change in area or capacity. Clearing is limited to no more than five trees.
- Repair and maintenance of existing shore erosion control structures, including living shorelines, where an MDE tidal wetlands authorization is not required
- Repair of existing utilities, including electric lines, sewer lines, water lines, telephone lines, marine fuel lines and fiber-optic cables

3.0 CLASS II: ACTIVITIES REQUIRING PRIOR APPROVAL

Class II activities include maintenance projects which exceed the thresholds of Class I projects as well as new minor construction projects. If required, stormwater management measures must be sufficient to achieve a 10% reduction in pollutant loadings below existing levels. Class II projects must be individually submitted to Commission staff for concurrence as a minor project. Comments from Commission staff must be received and addressed before the activity is commenced.

Class II projects include new minor development activities as well as development activities that may change 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. Critical Area 10% phosphorus reduction requirements will be determined on a case-by-case basis as described below.

SMCM shall be responsible for obtaining any other approvals, authorizations, licenses, or permits from other local, State and federal agencies and for meeting any other regulatory requirements associated with restoration, maintenance and development projects covered by this MOU.

Note: Early coordination with Commission staff on Class II projects is required in order 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 Exhibit, the Critical Area Commission reserves the right to decide at any time to bring a project that may appear to qualify under the MOU to the full Critical Area Commission for review and approval.

3.1 Qualifying Parameters

3.1.1. No impacts to Habitat Protection Areas other than the 100-foot Buffer, unless the impact is (1) minor in scope, (2) consistent with COMAR Title 27, and (3) SMCM adheres to all conditions and guidance provided by any MDE authorization, DNR Wildlife and Heritage review, DNR Fisheries review, and USFWS review (if applicable). Habitat Protection Areas include non-tidal wetlands; threatened and endangered species and species in need of conservation; plant and wildlife habitat including colonial waterbird nesting sites, historic waterfowl staging and concentration areas, riparian forests, forest interior dwelling species habitat, and Natural Heritage Areas; and anadromous fish propagation waters.

3.1.2 Any disturbance of the Buffer from activities or development by SMCM shall be minimized (i.e. no vegetation shall be removed from the Buffer except that required by the proposed activity or development). Any disturbance to or construction within the Buffer or expanded Buffer shall be mitigated as set forth in 27.01.09.01-2. Table H and in accordance with the planting standards in COMAR 27.02.05.09-2K and L., and as described in Exhibit A's Attachment 1: Mitigation.

3.1.3 The extent of any construction site or area disturbed shall be required to use sediment and erosion control practices.

3.1.4 10% pollutant removal on site and in accordance with the CAC's 10% Manual and with MDE's Technical Memorandum #4 and Attachment 1: Mitigation.

3.1.5 No new buildings or other non-water dependent structures (other than roads, bridges, and utilities) are permitted to be located in the Buffer. Replacement of existing non-water dependent structures in the Buffer that meet all other parameters can be reviewed under Class II. Any new lot coverage in the Buffer cannot be located further waterward than existing lot coverage in the Buffer for buildings or structures and shall not result in more than 1,000 square feet of lot coverage in the Buffer.

3.1.6 Shore Erosion Control linear footage limit is 500 linear feet.

3.1.7 Forest and developed woodland clearing may not exceed 10,000 square feet for new linear projects. Forest and developed woodland clearing may not exceed 5,000 square feet for non-linear projects. Mitigation is required for non-Buffer forest/developed woodland clearing at a mitigation ratio of 1:1.

3.1.8 Limits of disturbance (LOD):

Linear Projects – No square footage limit. Expansion of impervious surface must be limited to a 3-foot width on either side for roadways, and a 1-foot width on either side on an impervious trail. The 10% phosphorus reduction is required for expanding linear projects with impervious surfaces. Expansion of natural surface trails is limited to a maximum 9-foot width and existing canopy coverage must be maintained to the maximum extent practicable. If tree removal is necessary, it must be mitigated.

Non-linear Projects – For parking lots, buildings, etc., the LOD may not exceed 5,000 square feet of disturbance. New buildings and structures cannot exceed 2,000 square feet of lot coverage. The expansion or replacement of existing buildings or structures cannot have a net increase in lot coverage that exceeds 1,000 square feet.

3.1.9 Projects may be permitted to exceed Parameters 3.1.6 - 3.1.8 listed above, but SMCM 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. SMCM must provide written justification that explains why a development project meets the intent of this MOU despite exceeding disturbance, size, or Buffer encroachment threshold 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, expanding 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
- The activities are maintenance in nature

- All other parameters of Class II are met
- Any building that exceeds the size parameter is for storage or maintenance purposes only
- The purpose of the project is to address safety concerns

3.2 Eligible Projects

Class II projects include maintenance projects which exceed the thresholds of Class I projects as well as new minor construction projects. If required, stormwater management measures must be sufficient to achieve a 10% reduction in pollutant loadings below existing levels. Class II projects must be individually submitted to Commission staff for concurrence as a minor project. Comments from Commission staff must be received and addressed before the activity is commenced.

The following is a list of projects that may meet the Class II Qualifying Parameters. This list is not inclusive of every project; there may be projects not listed below that meet the Qualifying Parameters and can be proposed by SMCM and reviewed by CAC staff under Class II.

STRUCTURAL AND FACILITY PROJECTS (10% required)

- New buildings and structures
- Expansion or replacement of existing buildings and structures

DRAINAGE IMPROVEMENTS (10% not required)

- Installation of new or modification of existing storm drain outfalls
- Installation of new or modification of existing inlets and storm drains
- Installation of new or modification of existing culverts

SHORE EROSION CONTROL (10% not required)

- New or replacement shore erosion control measures that require authorization by MDE or the Board of Public Works (BPW) (e.g., revetments, bulkheads, living shorelines)

ROADWAY, PARKING AND SIDEWALK PROJECTS (10% required)

- Reconstruction, patching, and/or resurfacing of intersections, roadways, parking lots, sidewalks, bicycle facilities, or other surfaces where an increase in imperviousness is proposed or that involves the conversion of one type of impervious to another.
- Reconstruction or resurfacing of roadways, parking lots, and/or sidewalks where changes are proposed to the grade, line, or cross section of the original pavement.
- Upgrades to existing roadways, parking lots, and/or sidewalks to meet requirements for Americans with Disabilities Act (ADA)
- Reconstruction of existing sidewalks and new or existing ADA ramps

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

- Installation of new utility lines
- Replacement of existing utility lines when serving new development
- Replacement of access crossings or utility crossings

PIER AND PILES (10% not required)

- New pier and piles (MDE or Board of Public Works authorization is required)

NONSTRUCTURAL/RESTORATION PROJECTS (10% not required)

- Clearing/Removal of more than five (5) hazardous trees
- Streambank stabilization
- Wetland creation provided that no Habitat Protection Areas are impacted, other than the Buffer.
- Low-impact slope stabilization projects that utilize appropriate plantings, low retaining walls or other related landscape stabilization and restoration techniques

INSTALLATION OF NEW KAYAK/CANOE LAUNCHES (10% may be required)

- 10% not required if done with soft materials and impacts less than 250 square feet
- No threshold for limit of disturbance or clearing
- Impacts are permitted in the Buffer

MINOR SOLAR ENERGY GENERATING SYSTEM (10% Rule is not required if project meets MDE SWM requirements)

- The project shall be consistent with COMAR 27.02.05.15-1 through .15-3
- Consistent with COMAR 27.02.07.02, the Chairman may refer any application to the Commission for review

3.3 Project Submittal Requirements

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

- Project description and details, including a justification for minor exceedance if necessary
- Critical Area acreage and designation
- Site plan showing the location of the development activity, including the limit of disturbance (LOD), and the location of the 100-foot Buffer and expanded Buffer
- Existing, removed, new, and total lot coverage
- 10% pollutant reduction spreadsheet including individual best management practices (BMP) tabs, if applicable
- Proposed disturbance inside the Critical Area Buffer
- Square footage of canopy removed (inside and outside the Critical Area Buffer)
- A Buffer Management Plan that shows the limits of the delineated Buffer and expanded Buffer, the proposed impacts and/or tree removal in the Buffer, and the quantity, species, and location of the mitigation plantings if applicable
- Presence of and impacts to Habitat Protection Areas (HPAs) other than the Buffer
- Agency coordination letters (DNR WHS, DNR Fisheries, MHT, and USFWS)
- Copies of any required MDE or BPW authorizations and/or permits
- Climate resiliency assessment
- Location of wetland adaptation areas
- If required to comply with Coast Smart Construction criteria, include the following:
 - Project Screening Checklist
 - Construction Waiver Form and Approval Letter (if applicable)

ATTACHMENT 1: MITIGATION

Stormwater Management

The construction or expansion of stormwater management systems usually involves some type of ground disturbance and is likely to damage or destroy subsurface archeological resources (although improved stormwater management may provide protection as well). On the other hand, if existing systems fail, the effects can be catastrophic: archeological resources could be inundated and saturated for days with contaminated floodwater. (Source: MHT: Planning for Maryland's Flood-Prone Archeological Resources)

If required, stormwater management measures for Class II projects covered under this MOU must be sufficient to achieve a 10% reduction in pollutant loadings below existing levels. Given the constraints SMCM faces due to existing onsite archeological resources and the need to upgrade or repair existing facilities, this attachment provides guidance to address mitigation requirements, including meeting the 10% pollutant reduction requirement in the Critical Area. Existing stormwater management systems can be maintained, repaired, and upgraded as outlined in Exhibit A to the MOU. New development or redevelopment will require additional stormwater management to address the increased runoff from impervious surfaces.

While all SWM BMPs included in the [Maryland Stormwater Design Manual](#) are available for use, landscape options may be more suitable for historic sites. Landscape measures are often low impact and can be less expensive to implement than engineered options. Landscape options preserve or mimic natural landscapes and habitat and feature native plant species and diverse wildlife.

Potential preservation benefits of landscape options include directing stormwater away from historic resources, visually unobtrusive stormwater management, and potentially more appropriate context for historic resources. (Source: MHT: Selecting Preservation-Sensitive Mitigation Options)

Landscape Options for Stormwater Management

- Swales
- Impervious Surface Reduction
- Permeable Pavements
- Rain gardens
- Bioretention
- Rainwater Harvesting/Rain barrels
- Rooftop Disconnection
- Non-Rooftop Disconnection
- Sheetflow to Conservation Area
- Native plants/Conservation Planting

Master Buffer Management Plan

This exhibit applies to existing uses in the Buffer as well as future needs. The individual parcels in parentheses reflect these uses. See BMP Map I for the entire property with special management areas highlighted.

Any disturbance of the Buffer from activities or development by SMCM shall be minimized (i.e. no vegetation shall be removed from the Buffer except that required by the proposed activity or development). Any disturbance to or construction within the Buffer or expanded Buffer shall be mitigated as set forth in 27.01.09.01-2. Table H and as follows.

Mitigation Ratios

- New water-dependent facility 2:1
- Redevelopment of an existing facility within the same footprint 1:1
- Shore erosion control 1:1
- Linear Project Buffer Mitigation 2:1
- New development in the Buffer 3:1
- An additional 1:1 mitigation is required for any area of canopy coverage removed within the Buffer
- Non-Buffer forest/developed woodland mitigation ratio is 1:1

General Mitigation Guidance

- All mitigation plantings shall be species that are native to the Coastal Plain of Maryland
- Mitigation for Buffer disturbance shall occur on the following priority basis:
 1. On-site within the Buffer – Small caliper trees, whips, and seed mixes maybe be used if necessary to help facilitate mitigation in the Buffer
 2. On-site and adjacent to the Buffer
 3. On-site elsewhere in the Critical Area
 4. On SMCM property outside of Critical Area in approved location
- Forest mitigation should occur at approximately 430 woody stems per acre
- The Buffer shall be expanded as described in COMAR 27.01.09.01.
- Mitigation for forest clearing shall be by square footage, not tree-for-tree if it is greater than 10,000 square feet

Buffer Use Categories

Public Access areas

- No mitigation required for maintaining existing access areas
- Maintain existing canopy and structure

Existing viewsheds

- Maintain existing structure and canopy by limbing, removal of saplings, removal of invasive vines
- No mitigation required
- The following viewsheds are shown on attached Map #1
 - Segment 1 - applies along either side of Rt. 5 from bridge to Campus Drive and includes maintenance mowing between the roadside and marsh vegetation. Yearly analysis and inspection for invasive wetland grasses.
 - Segment 2 - applies along either side of Rt. 5 from Campus Drive to Fisher Road and includes maintenance mowing of grass on Admissions Hill and along roadside. The main goal is to keep vegetation low on the river side of Route 5.
 - Segment 3 - applies along Rt. 5 in front of the Cobb House. The goal is to keep vegetation low and maintain existing trees.
 - Segment 4 - small section along Rt. 5 next to the driveway of Queen Anne Hall. The goal is to maintain existing trees.
 - Segment 5 - This includes a small section along Rt. 5 near the oyster midden. Maintenance mowing includes the grassy areas with opportunity for shrub/tree planting in the future.
 - Segment 6 - along Rt. 5 from Queen Anne's Hall to include all of St. John's Pond. The goal is to keep vegetation low along the roadside and promote restored shoreline growth. Vegetation will be kept low to ensure all sightlines, indicated in purple on the map, are unobstructed. The State Highway Administration maintains growth between the guardrail and the river.

Garden maintenance

- Maintain existing landscape gardens including removal of volunteer trees and shrubs
- No mitigation required

Active archaeological dig site

- Limit exposed areas of bare soil
- Mitigation required at 1:1 for trees and natural vegetation removed

Invasive species management

- Removal of invasive vines is generally allowed without mitigation provided that other cover is existing and maintained (assuming that there are tree and shrub species underneath)
- Removal of invasive/exotic trees requires mitigation at 1:1
- Removal of other existing vegetation requires mitigation at 1:1 by area.
- Potentially necessary in all Segments, Segment 1 especially

Removal of diseased, dying, invasive, or hazardous trees

- Mitigation ratio is 1:1

Attachment 1 Maps

Map 1. Buffer Use Areas



ATTACHMENT 2: SITE-WIDE CLIMATE RESILIENCY ASSESSMENT

Background

As per COMAR 27.02.05.02.A.(2), State projects impacted by coastal vulnerabilities, such as sea level rise, extreme weather events, and marsh or wetland adaptation areas, shall demonstrate consideration of those hazards and their impacts. This consideration shall demonstrate identification and, when possible, implementation of climate resilient practices.

For each proposed Class II or Commission level project, SMCM shall review the Maryland [CS CRAB](#)¹ (Coast Smart Climate Ready Action Boundary) in order to determine if the project location is likely to experience coastal hazards. The CS CRAB was created by the Maryland Coast Smart Council as a potential indicator of areas subject to flooding under future sea level rise and storm surge events.

A few select maps have been provided in this document below; these locations were chosen to highlight specific areas of concern due to increased vulnerability based on the CS CRAB. These maps may be revised anytime as needed based on updated technology, resources or climate projections. If a project is located in a vulnerable area according to the map, SMCM should complete an additional review using the best available resources.

Additionally, SMCM shall review wetland adaptation maps during the siting of proposed projects using the [Maryland Coastal Atlas mapping tool](#) and selecting the “sea level rise wetland adaptation areas” layer. The purpose of reviewing these maps is to plan for impacts to marsh adaptation areas that may prohibit their migration. Preservation of marshes and wetlands is important in coastal settings because they can provide a significant level of protection along the shoreline. Marsh and wetland ecosystems have a natural buffering capacity against coastal hazards, such as storm surge and sea level rise.

The Maryland Coastal Atlas maps illustrate anticipated marsh adaptation areas, and rank them as high, medium or low priority. High priority indicates better conditions and paths for marsh migration and thus successful marsh adaptation. An example map has been provided below. Maps may be revised anytime as needed based on updated technology, resources or climate projections. If a project is located in a wetland adaptation area according to the map, SMCM should complete an additional review using the best available resources.

¹ The CS CRAB is the horizontal floodplain created by the Base Flood Elevation (BFE) plus a 3-foot vertical extent. The Federal Emergency Management Agency (FEMA) defines BFE as the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year.

Procedures

Class I projects, which are listed in Section 2.2 of the MOU and include projects associated with archaeological sites, do not require a vulnerability assessment.

If a Class II project is not located in an area likely to be impacted by anticipated coastal hazards based on the CS CRAB or marsh adaptation areas, the following requirements do not apply. If the project *is* located in such an area, it will fall into one of several categories depending on whether or not the project includes a historical component, and type of project. Each category below has specific procedures based on the nature of that category.

Historical Sites and Structures

1) Archaeological Sites

Archaeological sites can be uniquely vulnerable to coastal hazards and opportunities to reduce impacts and hazards are often minimal. However, vulnerability and mitigation options vary on a case-by-case basis.

Application information should note if coastal hazards are anticipated for the project site:

- Location in the CS CRAB
- Location in a wetland adaptation area

With the acknowledgement that, by nature, archaeological sites typically cannot be relocated, SMCM will rely on the Historic St. Mary's City Commission (HSMCC) Research Department to identify archeological sites at risk in addition to MHT requirements, policies, and procedures that may guide or discourage alterations to the site for coastal resilience. MHT will then assess potential impacts and recommend mitigation options.

Nonhistorical Sites and Structures

2) Buildings, Structures and Linear Projects

SMCM should avoid locating new buildings and structures in vulnerable locations and in anticipated marsh adaptation areas. If this is not feasible, the project may require approval by the full Critical Area Commission.

SMCM should avoid locating linear projects, including but not limited to new roads, sidewalks or trails; diversions and extensions of roads, sidewalks, or trails; etc., in vulnerable locations and in anticipated marsh adaptation areas. These projects should be revised to accommodate the applicable coastal hazard. Accommodations may involve rerouting of the trail, abandonment and restoration, or elevating at-risk portions. If this is not feasible, the project may require approval

by the full Critical Area Commission. If impacts to the Buffer occur strictly in order to accommodate anticipated coastal hazards, mitigation is required as per the SMCM MOU and Buffer Management Plan.

Application information should note if coastal hazards are anticipated for the project site:

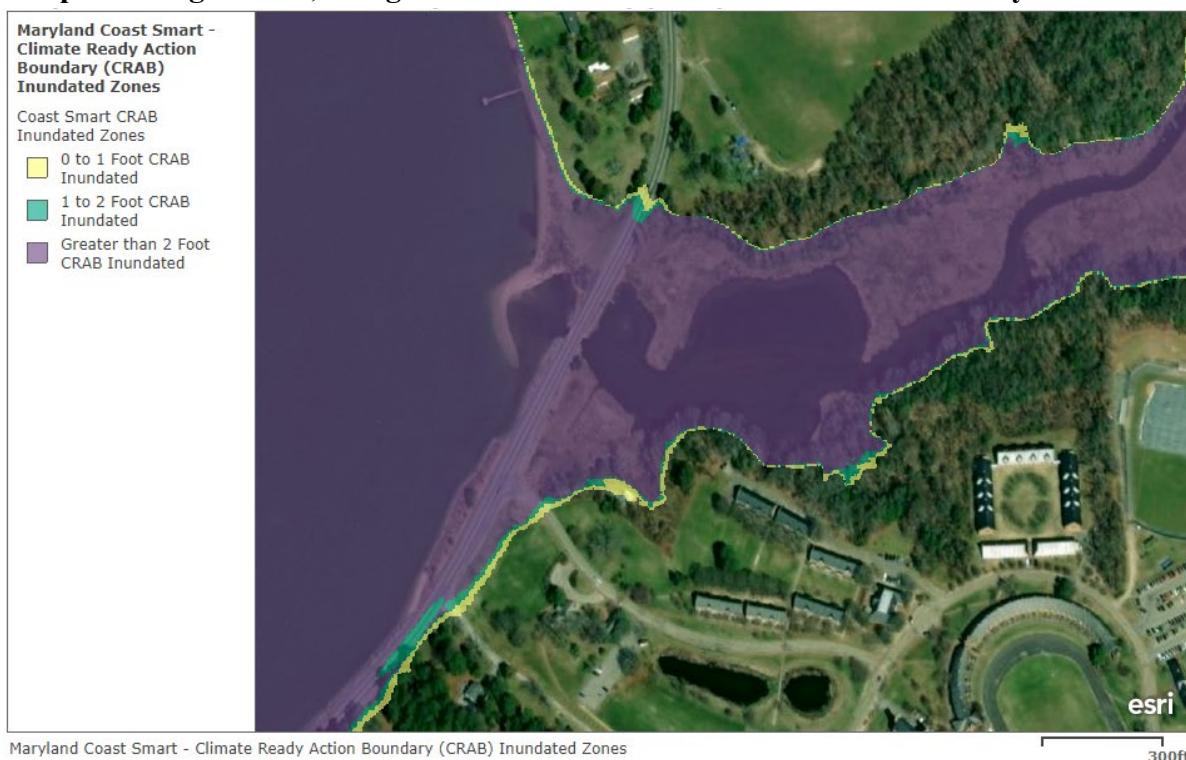
- Location in the CS CRAB
- Location in a wetland adaptation area
- If either of the above scenarios apply, application information shall demonstrate that SMCM has attempted to avoid impacts from coastal hazards in the following ways:
 - Incorporate climate resilient practices to minimize damage to the investment or project; examples include freeboard, wet proofing and dry proofing.
 - Relocate the project to avoid impacts from coastal hazards.
 - Relocate the project to preserve and maintain a potential high or medium priority wetland adaptation area.
- If it is not feasible to avoid impacts to high or medium priority wetland adaptation areas as described above, the project will require review by the full Commission. SMCM must:
 - Demonstrate why the impact is unavoidable;
 - Demonstrate how other ecological features on site could be enhanced to maintain existing wetland function and provide protection against coastal hazards; and
 - Recommend methods to address detrimental impacts.

Projects that cannot avoid coastal hazards and also cannot incorporate practices to minimize impacts will require review by the full Commission. Projects that cannot avoid impacts to wetland adaptation areas will also require review by the full Commission.

REST OF PAGE
INTENTIONALLY LEFT
BLANK

Attachment 2 Maps

Map 1. College access, bridge over Fisherman Creek. CS CRAB boundary inundation



Map 2. Rowing Center and Muldoon River Center. CS CRAB boundary inundation



Map 3. St. Johns Pond and Queen Anne Residence Hall. CS CRAB boundary inundation



Map 4. Fisherman Creek. Priority Wetland Adaptation Areas



ATTACHMENT 3: TRACKING SPREADSHEETS

Table 1. Class I Project Tracking

Date of Construction	Project Name/Description	Lat	Long	Lot Coverage Added (SF)	Clearing Required (# of trees)	Buffer Disturbance/ Clearing (SF)	Forest (SF)	Buffer (SF)	Location of Mitigation	Date of Mitigation Implementation	Contact Information (Name, Phone, Email)	Note/ Comments

Table 2. Mitigation Tracking

Project Description	Class	Afforestation Required (SF)	Afforestation Met			Reforestation Required (SF)	Reforestation Met			Buffer Mitigation Required (SF)	Buffer Mitigation Met			Contact Information (Name, Phone, Email)	Notes/ Comments
			SF	Location (Lat/ Long)	Date		SF	Location (Lat/ Long)	Date		SF	Location (Lat/ Long)	Date		