

Appendix D2

**Memorandum of Understanding
Between Maryland DNR and Harford County
Regarding Otter Point Creek
July 19, 1990**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") made this 19th day of July, 1990 by and between the Maryland Department of Natural Resources ("Department"), having an address at 580 Taylor Avenue, Tawes State Office Building, Annapolis, Maryland 21401 and Harford County, Maryland, ("County") having an address at 220 South Main Street, Bel Air, Maryland 21014.

RECITALS

WHEREAS, the County owns and administers Leight Park, located in Harford County, Maryland, which is comprised of valuable nontidal and tidal freshwater wetlands and uplands and is in need of long-term protection; and

WHEREAS, Leight Park has been set aside by the County as a limited access natural area for passive recreation and environmental research, monitoring, educational, and interpretive programs that contribute to a better understanding of estuarine processes; and

WHEREAS, the Department, through its Tidewater Administration, is the lead agency for the Chesapeake Bay National Estuarine Research Reserve in Maryland (the "Reserve"); and

WHEREAS, the federally mandated goals of the National Estuarine Research Reserve System ("NERRS") are to:

- (1) Ensure a stable environment for research through long-term protection of estuarine reserve resources;
- (2) Address coastal management issues identified as significant through coordinated estuarine research within NERRS;
- (3) Enhance public awareness and understanding of the estuarine environment and provide suitable opportunities for public education and interpretation;
- (4) Promote federal, state, public and private use of one or more reserves within NERRS when such entities conduct estuarine research; and
- (5) Conduct and coordinate estuarine research within NERRS, gathering and making available information necessary for improved understanding and management of estuarine areas; and

WHEREAS, Leight Park has been proposed for designation (along with the Izaak Walton League of America's Melvin G. Bosely Conservancy) by the National Oceanic and Atmospheric Administration ("NOAA") as the Otter Point Creek component of the Reserve; and

WHEREAS, the Department and the County agree that the County's plans for Leight Park are compatible with the NERRS goals and that the County can benefit from participation in NERRS and desire to enter into this MOU to govern the incorporation of Leight Park into the Reserve.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Department and the County do hereby agree as follows:

ARTICLE I: Reserve Boundary

The Otter Point Creek component of the Reserve will include the 61+- acres of land comprising Leight Park presently owned and administered by the County. The open water of Otter Point Creek will remain under State ownership and regulation and is not affected by this MOU. The boundaries are designated on the map which is appended to this MOU as Appendix A and may be found in greater detail among the County land records at Liber G.R.G. No. 377, folio 549. Additional properties acquired in the future by the County for inclusion in Leight Park may also be included in the Reserve upon approval by the County, the Department and NOAA.

It is understood and agreed that the Reserve shall be identified at both its boundaries and main entrance by the placement of a sign(s) which will be in keeping with the natural appearance of Otter Point Creek. The design will be agreed to by the Site Manager or other County representative and by the Reserve Manager, and will be approved by NOAA.

ARTICLE II: Management Plan

There shall be a management plan ("Management Plan") for the Reserve which shall describe a framework for conducting research and educational programs and protecting natural areas and resources. A limited access policy and means of enforcement will be described in the Management Plan. The Management Plan shall be developed by the Department's Estuarine Research Reserve staff and will be reviewed and adopted by the County, the Department and NOAA. The Management Plan will also be reviewed by the Otter Point Creek management plan advisory committee, the Jug Bay management plan advisory committee, the Monie Bay site advisory committee, and the Reserve's management plan advisory committee. The Management Plan shall not take effect for Leight Park without the approval of the County, the Department, and NOAA. The Management Plan shall be reviewed and revised, if appropriate, every five years. Revisions pertaining to the Leight Park property shall become effective only with the approval of the County, the Department, and NOAA.

ARTICLE III: Title and Use of the Leight Park Property

Title to Leight Park will remain with the County. Leight Park will be protected in perpetuity as a limited access natural area, and will be used as described in the Management Plan, i.e. it will be used for research, monitoring, education and interpretation with the ultimate goal of improved management of estuarine systems in Maryland and throughout the United States.

Multiple uses of Leight Park will be encouraged to the extent that such uses are compatible with the goals of the Reserve and of NERRS. Leight Park will be managed to facilitate ecological research, monitoring, education and interpretation. Uses and/or levels of use which result in significant, long-term damage to the natural processes or resources of the Reserve shall be prohibited.

ARTICLE IV: PROHIBITED AND RESTRICTED ACTIVITIES

The following activities will be prohibited or restricted within the Reserve:

- A. Industrial or commercial activities, except for commercial fishing in State waters as regulated by the Department.
- B. Display of billboards, signs or advertisements on or over the Reserve, except (1) to identify the Reserve; (2) to advertise the educational and naturalistic uses of the Reserve; (3) to commemorate the history of the Reserve, its recognition under State or federal historical registers; or (4) as needed for educational, interpretive, research, or monitoring programs. Signs shall not damage living trees and shall be placed in accordance with applicable local regulations.
- C. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Reserve, except that soil, rock, other earth materials, vegetative matter or compost may be placed as may be reasonably necessary for the construction and/or maintenance of permitted structures and accesses.
- D. Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials, except for (1) the purpose of combatting erosion or flooding, or (2) the construction and/or maintenance of permitted structures, accesses and wildlife habitat.
- E. Diking, draining, filling or removal of wetlands, except for the purpose of (1) creating and maintaining silt basins, runoff ponds, or other conservation measures.

- F. No building, facility or other structure, shall be constructed on the Reserve after the date of this MOU without express written approval from NOAA, the Department and the County, except (1) temporary structures designed, constructed and utilized in connection with the scientific, naturalistic, and educational uses of the Reserve may be constructed with County approval, and (2) permanent boardwalks, observation decks, or elevated walkways may be constructed with County approval. All construction must comply with applicable county, state and federal regulations.

Within Leight Park, the County shall maintain a vegetative buffer strip along Otter Point Creek. The width of the buffer strip shall be a minimum of 100 feet (or as determined by applicable law requiring a larger buffer) along Otter Point Creek, except as may be necessary for (1) erosion control; (2) wildlife management; (3) water dependent educational or research related uses and associated structures; (4) hunting, fishing, or trapping; or (5) access to the water. Manure, road salt, and compost shall not be stored within one hundred (100) feet of streams or Bay shorelines. Pesticides, insecticides, herbicides or fertilizers shall not be used or deposited within one hundred (100) feet of streams or Bay shorelines, except for the purpose of controlling phragmites and other noxious weeds through methods approved by the Department and in accordance with NERRS policies. Consistent with state policy, there shall be no use of herbicides on emergent or submerged aquatic vegetation.

The County shall exercise its duties so as to prevent or to minimize damage to water quality, air quality, land/soil stability and productivity, wildlife, scenic and cultural values, and the natural topographic and open-space character of the Reserve.

ARTICLE V: Facilities

The facilities at Leight Park will be the property of the County and will be used for Reserve purposes (e.g. research, monitoring, or education) in accordance with the Management Plan. Facilities built with federal or state Reserve moneys shall be the property of the County unless and until such time as this MOU is terminated and 15 CFR 921.21(e) deed language becomes operative.

ARTICLE VI: Operation and Maintenance of the Reserve

The County will have the primary responsibility for funding, operating, and maintaining Leight Park as a portion of the Otter Point Creek component of the Reserve. These funds may be used to match State or NOAA funds toward facility, equipment and program enhancements and toward the salary of a Site Manager at Leight Park as delineated in the Management Plan.

ARTICLE VII: State-County Roles in Reserve Management

A Site Manager shall be employed full-time by the County to manage Leight Park within three years of the designation of Leight Park as a component of the Reserve. The Department shall provide 50% of the Site Manager's salary with either State or NOAA funds or a combination of both, provided that such funds are available within the approved State budget. The Site Manager shall also manage the remainder of the Otter Point Creek component of the Reserve subject to management agreements with the landowner(s) of those properties. Until a Site Manager is hired, a representative of the County Department of Parks and Recreation shall act as the Site Manager. Responsibilities of the site manager will be as delineated in the Management Plan. Additional staff will be hired by the County as needed to work at the Otter Point Creek component of the Reserve.

The County Department of Parks and Recreation and the site manager shall provide information as needed to comply with auditing, accounting, and reporting requirements of NOAA and the State. (See Appendix B.)

The Reserve Manager is employed by the Department and coordinates administrative functions and the research and education programs among the multiple sites of the Reserve, and acts as liaison with NOAA and other states' National Estuarine Research Reserve programs. Reserve employees employed by the Department, including but not limited to, the Reserve Manager, an Education Coordinator, a Research Coordinator, and a Volunteer Coordinator, will coordinate with the site manager and other County employees.

The County Department of Parks and Recreation and the Site Manager shall administer and manage the Otter Point Creek component in accordance with the goals of the Reserve as set out in the Management Plan.

ARTICLE VIII: Maryland Saved Harmless

The County will be responsible for all damage to life and property due to its activities, or those of its agents, employees, or subcontractors, in connection with its performance under this MOU.

The County shall indemnify and save harmless and defend the State of Maryland and all of its 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 performed under this MOU, either by the County or any subcontractor, or their employees, agents, or representatives. This responsibility is not to be deemed as a waiver of any immunity which may exist in any action against the Department.

ARTICLE IX: Dispute Resolution

The Department and the County both reserve the right to advise the other party of its concerns over the actions of the Department or the County which are not consistent with the NERRS goals, this MOU,

and the specific goals of the Reserve as delineated in the Management Plan.

In the event of a dispute between the Department and the County concerning the management, uses, or operation of the Reserve, the following steps shall be taken:

- 1) Both parties shall make a good faith effort to resolve the dispute by themselves for 90 days;
- 2) If after 90 days the dispute has not been resolved, either party may request, in writing, the designation of a mediator qualified in dispute resolution which must be approved by both parties. This person will aid in resolving the dispute in a manner consistent with the Reserve and NERRS goals. The mediator will work to develop a resolution acceptable to both parties but shall not have the power to make a binding decision. The cost of the mediator shall be shared equally between the County and the Department.
- 3) If such dispute cannot be solved through the mediation process, the dispute shall be resolved through whatever remedies are appropriate under applicable law or under the terms of this MOU. The parties agree to inform NOAA at each stage of the dispute resolution process.

Both parties shall make a good faith effort to resolve the dispute throughout the dispute resolution process.

ARTICLE X: General

A. Effective Date. This MOU shall become effective on the date Leight Park is designated as a part of the Reserve.

B. Complete understanding. This MOU represents the complete understanding between the parties and supersedes all prior negotiations, representations, guaranties, warranties, promises, statement or agreements, either written or oral, between the parties.

C. Termination. This MOU shall continue in effect for a period of ninety-nine (99) years, unless amended, renewed or terminated. This MOU may be terminated with the consent of all its signatories by execution of a written termination agreement with an effective date 60 days from the date of execution by all signatories. The unilateral withdrawal of either the Department or the County may occur upon one year's prior written notice to the other party. A decision to terminate the MOU on the part of the County shall require the approval of both the County Executive and the County Director of Parks and Recreation. A decision on the part of the State to terminate the MOU requires the approval of the Secretary of the Department.

If this MOU is terminated, it is understood and agreed that designation of Leight Park as a component of the Reserve will be withdrawn and that the Federal Office of Management and Budget (OMB) will take any appropriate action with respect to grant funds as may be indicated by its regulations. Compensation for State or federal funds appropriated to the Reserve for this component shall be made in accordance with CFR 921.21(e) and applicable OMB circulars. See Appendix B.

D. Amendment. Both parties agree to inform NOAA of any proposed amendments to the MOU. The County and Department will consider NOAA comments prior to approval of any amendments. Amendments may be made to this MOU with the prior approval of both the County and the Department. Amendments shall be in writing and shall take effect upon execution by all signatories to this MOU.

E. Applicable law. This MOU shall be given effect and construed by application of the law of Maryland, and any action or proceeding arising hereunder shall be brought in the courts of Maryland.

F. Exhibits. Each writing or plat referred to as being attached as an exhibit is hereby made a part of this MOU.

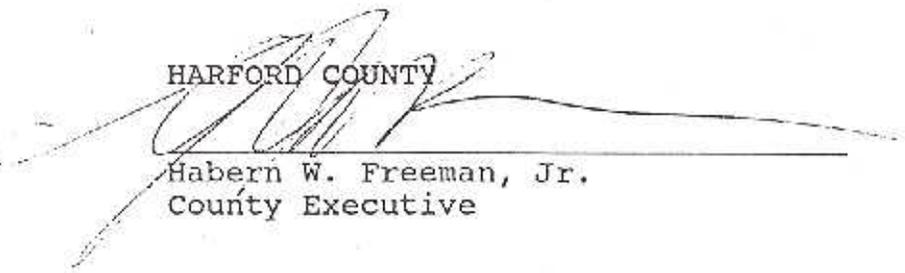
Signed,

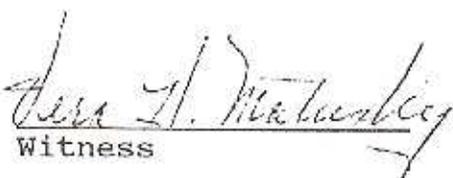
MARYLAND DEPARTMENT OF NATURAL
RESOURCES

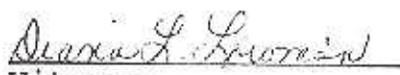

Torrey C. Brown, Secretary

7/19/90

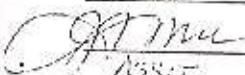
HARFORD COUNTY

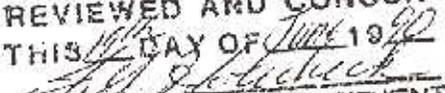

Habern W. Freeman, Jr.
County Executive


Witness


Witness

Approved for form and legal
sufficiency this 18 day of
JUNE, 1990.


County Attorney

REVIEWED AND CONCUR
THIS 18 DAY OF JUNE 1990

DIRECTOR OF PROCUREMENT

