

**INTERGOVERNMENTAL AGREEMENT FOR
CONTINUING OPERATIONS AND HABITAT DEVELOPMENT AT HART-
MILLER ISLAND**

BY AND BETWEEN

MARYLAND PORT ADMINISTRATION

AND

MARYLAND ENVIRONMENTAL SERVICE

AND

MARYLAND DEPARTMENT OF NATURAL RESOURCES

**MPA Contract No. 521076
MPA Project Identification No. N/A
MES Contract No. 2-21-3-59**

THIS INTERGOVERNMENTAL AGREEMENT FOR CONTINUING OPERATIONS AND HABITAT DEVELOPMENT AT HART-MILLER ISLAND (“Agreement”) is made and entered into as of this 10th day of February, 2021 by and between the Maryland Port Administration, a modal unit of the Maryland Department of Transportation, (“MPA”), the Maryland Environmental Service (“MES”), an agency and instrumentality of the State of Maryland constituted as a body politic and corporate, and the Maryland Department of Natural Resources (“DNR”), a principal department of the State of Maryland, collectively referred to as the “Parties”.

RECITALS

WHEREAS, in 1977 and 1978, Bethlehem Steel Corporation and C.J. Langenfelder & Son, Inc., respectively, conveyed deeds to property then known as the Hart-Miller-Pleasure Island Chain to the State of Maryland to the use of the Department of Natural Resources; and

WHEREAS, in 1981, the Maryland General Assembly passed legislation signed by the Governor declaring the Hart-Miller-Pleasure Island Chain an open area, and requiring the State to grant a Conservation Easement to the Maryland Environmental Trust under which the property would be used and developed only as a dredge management containment facility and an area open to the public for recreational and educational use, Md. Natural Resources Code Ann., §§ 5-1202.1 and 1202.2; and

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WHEREAS, on January 1, 2010, the Hart-Miller Island Dredged Material Containment Facility or (“HMI”) as it is now referred to, stopped accepting dredge material as required under Maryland law; and

WHEREAS, the Property is currently divided into two cells, North and South (see Exhibit A which is attached hereto and made a part hereof); and

WHEREAS, a portion of HMI operated by DNR known as the HMI State Park, consisting of a beach and campground facilities, has provided public access to a limited portion of HMI since 1982; and

WHEREAS, the Parties, consistent with Maryland law, entered into an Interagency Agreement in 2015 (the “2015 Agreement”) to expand public access to the South Cell of HMI, provide increased passive recreation opportunities, demonstrate the beneficial use of dredge material as a habitat restoration resource, and to fulfill commitments of recreational access made to the local community; and

WHEREAS, the term of the 2015 Agreement ended on December 31, 2020, and the Parties desire to continue their collaborative partnership at HMI by entering into a new agreement that will set forth the obligations of the Parties with respect to public access operations and habitat development at HMI.

NOW THEREFORE, DNR, MPA, and MES agree as follows:

ARTICLE 1 – Term of Agreement

- 1.1. Effective Date. Notwithstanding the date this Agreement is fully executed, this Agreement shall commence on March 1, 2021 (“Effective Date”).
- 1.2. Term. The term of this Agreement shall be for a period of five years from the Effective Date until December 31, 2025, unless (i) terminated in accordance with the provisions of Section 6.12., or (ii) extended by the Parties by mutual agreement in writing.

ARTICLE 2 – MPA and MES Responsibilities

- 2.1. HMI South Cell. MPA, or MES under contract to MPA, shall provide the following:
 - A. All water quality management until such time as the State Individual Discharge Permit is terminated.
 - B. Pond elevation management, including pond fill pumps and spillway operations.

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- C. All maintenance or removal required for any dredged material management facility structures, including the dikes, berms, holding pond, spillways, pumps, and piers.
 - D. Invasive species and mosquito control.
 - E. Construction associated with the final site design of the South Cell, including, but not limited to berm dike raising and dredging a deep pool.
- 2.2. HMI North Cell. The Parties have developed and agreed to: (i) a set of North Cell Habitat Goals and (ii) a North Cell Habitat Development and Restoration Concept Option D, which are attached hereto as, respectively, Exhibits B and C, and which are hereby made a part of this Agreement. MPA, or MES under contract to MPA, shall provide the following in connection with the habitat development, restoration and maintenance in the North Cell:
- A. Design and construction of North Cell Habitat Development and Restoration of Concept Option D, including an estimated budget and time frame for implementation. MPA/MES shall provide DNR with the opportunity to review and comment on design plans.
 - B. Post construction monitoring of any vegetation established during and after the installation process of any approved North Cell design for a period up to three years at which time monitoring shall be reevaluated to determine if continued monitoring is necessary.
 - C. MPA/MES will continue to maintain and comply with all permits issued to MPA and/or MES in accordance with applicable law.
 - D. Invasive species and mosquito control.
 - E. Planning for, and participation in, public informational meetings along with DNR.
 - F. Work with DNR to explore future funding sources to supplement the costs associated with the North Cell Habitat Development.
 - G. All maintenance or removal required for any dredged material management facility structures, including the dikes, berms, spillways, pumps, and piers.

ARTICLE 3 – DNR Responsibilities

- 3.1. HMI South Cell and HMI State Park. DNR shall be provide the following:
- A. Operation and maintenance of all South Cell and HMI State Park trails, beaches, benches, and other park amenities, except for the blue trail cross dike loop as depicted on Exhibit D (maintained by MES), which is attached hereto and made a part hereof.

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- B. All labor and employees necessary to operate and maintain the HMI State Park and public access to the South Cell to provide recreational opportunities and experiences.
- C. Operation and maintenance of all DNR vehicles, tractors, and boats.
- D. All community outreach and education associated with HMI State Park and South Cell public access, including but not limited to, using its reasonable best efforts to collaborate with the HMI Friends Group.
- E. Planning, staffing, implementing, and managing all special events at HMI State Park and the South Cell.

ARTICLE 4. Committee on HMI Infrastructure

The Parties shall form a Committee on HMI Infrastructure/assets to study, evaluate, and make recommendations to the heads of MPA and DNR on an asset management plan that will review the current and ongoing cost of providing and maintaining the assets and infrastructure necessary to meet the changing uses at HMI and the requirements of the community and end users at HMI within available budgets. The Committee shall put a special focus on assets/infrastructure nearing the end of their useful life, including but not limited to, MPA/MES building complex (Operations building, garage, sheds, diesel tank), South Cell holding pond, electricity, piers (265 personnel pier, crane pier), DNR building complex, observation tower, Clivus system, and boating access. The Committee shall use reasonable efforts to make timely recommendations to the appropriate agency approval authorities.

ARTICLE 5. Indemnification; Limitation of Liability

- 5.1. Indemnification by the Parties. To the extent permitted by applicable law each of the Parties (each an “Indemnitor”) agrees for itself to indemnify and hold the other Parties (each an “Indemnitee”) harmless from and against any and all losses or liabilities incurred by the Indemnitee which arise out of or are in consequence of the performance or nonperformance of this Agreement to the extent such losses or liabilities are due to the fault or negligence of the Indemnitor. As used in this Section 5.1, the phrase, “losses or liabilities” shall include but not be limited to, actual expenditures or legal liability in connection with bodily injury (including death) to any person, damage (including loss of use) to any property (public or private), or alleged violation of permits, statutes, rules or regulations, or orders (including fines or penalties) of any governmental entity with appropriate jurisdiction for purposes of enforcement of applicable law. The term “Indemnitee” shall include elected officials, directors, officers, employees, and agents of the Indemnitee, provided that no such elected official, director, officer, employee, or agent of any Indemnitee hereunder shall be or become personally liable for any such losses or liabilities. Notwithstanding the foregoing, in no event shall the

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obligations of MPA, MES or DNR include indemnifying or holding each other harmless for any loss or liability arising out of any condition, release, loss, injury, damage, expense, or violation of applicable law occurring prior to or existing on the Effective Date.

- 5.2. Limitation of Liability. The Parties hereto expressly agree and understand that the indemnity obligations of the parties under this Agreement shall be limited to those direct and provable liabilities and losses which arise out of or are in consequence of the performance or nonperformance of each Party under this Agreement, to the extent such losses or liabilities are due, in whole or in part, to the fault or negligence of the Party. In no event, whether based upon contract, tort or otherwise, arising out of the performance or nonperformance of MPA, MES or DNR of their respective obligations under this Agreement, shall a Party to this Agreement be liable or obligated in any manner to pay special, consequential or indirect damages to the other Parties. The execution and delivery of this Agreement shall not impose any personal liability on the members, officers, elected or appointed officials, employees or agents of MPA, MES or DNR. No recourse shall be had for any claims based upon this Agreement against a member, officer, elected or appointed official, employee or other agent of MPA, MES or DNR in his or her individual capacity, all such liability, if any, being expressly waived by the Parties through execution of this Agreement. NOTHING IN THIS AGREEMENT IS INTENDED TO OR SHALL BE CONSTRUED TO WAIVE ANY IMMUNITY POSSESSED BY MPA, MES OR DNR, OR THEIR RESPECTIVE ELECTED OR APPOINTED OFFICIALS, OFFICERS, DIRECTORS AND EMPLOYEES, WHICH HAS NOT BEEN WAIVED BY EXISTING LAW.
- 5.3. No Joint or Several Liability. The Parties agree that nothing in this Agreement is intended to imply or create any joint and several liability between the Parties for the wrongful acts, omissions or negligence of any single Party.

ARTICLE 6. General Provisions

- 6.1. Further Assurances. The MPA, MES and DNR shall each execute and deliver any instruments and perform any acts necessary and reasonably requested by another Party in order to give full effect to this Agreement.
- 6.2. Assignment. No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Parties, which consent will not be unreasonably withheld. Any assignee hereunder shall fully assume the obligations of the assignor.

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- 6.3. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated herein and supersedes all prior understandings and agreements of the Parties with respect to the subject matter hereof.
- 6.4. Headings. The descriptive headings in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.
- 6.5. Execution in Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be deemed an original.
- 6.6. Waiver. No delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof.
- 6.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, and the Parties hereby expressly agree that the courts of the State of Maryland should have exclusive jurisdiction to decide any question arising hereunder.
- 6.8. Authorization: Binding Obligation. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of all parties, and this Agreement is a valid and binding obligation of the parties, enforceable in accordance with its terms.
- 6.9. Non-Discrimination in Employment. The provisions of Title VII of the Civil Rights Act of 1964 are hereby included in this Agreement to the end that no person in the United States shall, on the grounds of race, color, sex, religion, national origin, or disability, be excluded from participation in, be denied the benefits of or otherwise subjected to discrimination under this Agreement. The provisions of State Government Article, Title 20, Subtitle 6 (Discrimination in Employment) of the Annotated Code of Maryland are incorporated by reference and are made a part hereof.
- 6.10. Parties Contract Officers and Notice. Each party shall designate a Contract Officer and, on the date of execution of this Agreement, shall provide the other party with the Contract Officer's name and address, and with phone numbers by which the Contract Officer can be contacted at any hour of the day or night for duration of this Agreement.

All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be sent by facsimile, delivered by hand or mailed by first class certified mail, return receipt

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requested, postage prepaid, or sent by a nationally recognized delivery service, and in any case shall be addressed as follows:

If to MPA:

Maryland Port Administration
Suite 1900
401 East Pratt Street
Baltimore, Maryland 21202
(410) 385-4419
Attention: Director, Harbor Development

If to MES:

Maryland Environmental Service
259 Najoles Road
Millersville, Maryland 21108-2515
(410) 729-8201
FAX: (410) 729-8220
Attention: Director

If to DNR:

Maryland Department of Natural Resources
580 Taylor Avenue
Annapolis, MD 21401
(410) 260-8186
Attention: Superintendent, Maryland Park Service

Changes in the respective addresses to which such notices, consents, invoices or other communications may be directed and may be made from time to time by any Party by notice to the other Parties. Notices and consents shall be deemed to have been given when received.

- 6.11. General Compliance with Laws. Each Party shall comply with all federal, State, and local laws and regulations that affect performance or payment hereunder, or any materials, equipment, or employees connected in any manner whatsoever with such performance or payment.
- 6.12. Multi-Year Restriction. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be

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canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available. MES and DNR may not recover anticipatory profits or costs incurred after termination.

- 6.13. Third Party Beneficiaries. This Agreement does not and is not intended to create any rights or benefits for any third party. No third party shall have any legally enforceable rights or benefits under this Agreement.
- 6.14. Resolution of Disagreements. Should disagreements arise as to the interpretation of the provisions of this Agreement, 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 30 days of receipt of the written disagreement, then the Parties shall forward the written presentation of the disagreement to the head of each agency for appropriate resolution.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the date first written above.

INTENTIONALLY LEFT BLANK

MARYLAND PORT ADMINISTRATION

WITNESS:

Denise Vrablic

By:

William P. Doyle

William P. Doyle
Executive Director
Maryland Port Administration

Approved for Form & Legal Sufficiency:

Robert Munroe

Assistant Attorney General
Maryland Port Administration

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MARYLAND ENVIRONMENTAL SERVICE

WITNESS:

DocuSigned by:
Amanda Cooper
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By: _____

DocuSigned by:
Charles Glass
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Charles Glass, Ph.D., P.E.
Acting Director
Maryland Environmental Service

Approved for Form & Legal Sufficiency:


DocuSigned by:
Sean Coleman 2/5/2021
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Assistant Attorney General
Maryland Environmental Service

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MARYLAND DEPARTMENT OF NATURAL RESOURCES

WITNESS:

Missy Kelly By: 
Philip R. Hager, Assistant Secretary
Maryland Department of Natural Resources

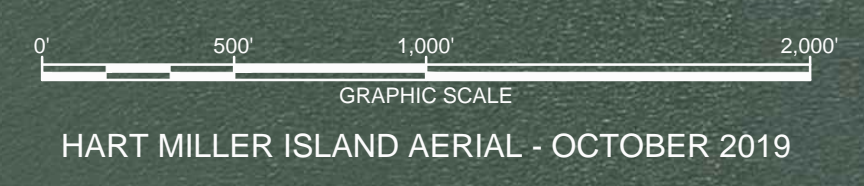
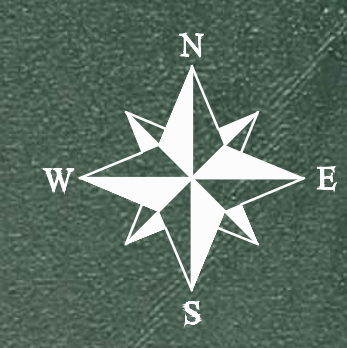
Approved for Form & Legal Sufficiency:

Rachel Eisenhauer 2/1/2021
Assistant Attorney General
Maryland Department of Natural Resources

This document may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original.

EXHIBIT A

HMI Aerial Photograph



HART-MILLER ISLAND (HMI)

NORTH CELL

SOUTH CELL

CHESAPEAKE BAY



EXHIBIT B
North Cell Habitat
Development Goals

HMI North Cell Habitat Development Goals

MPA and DNR shared goals concerning the development of the North Cell. These include:

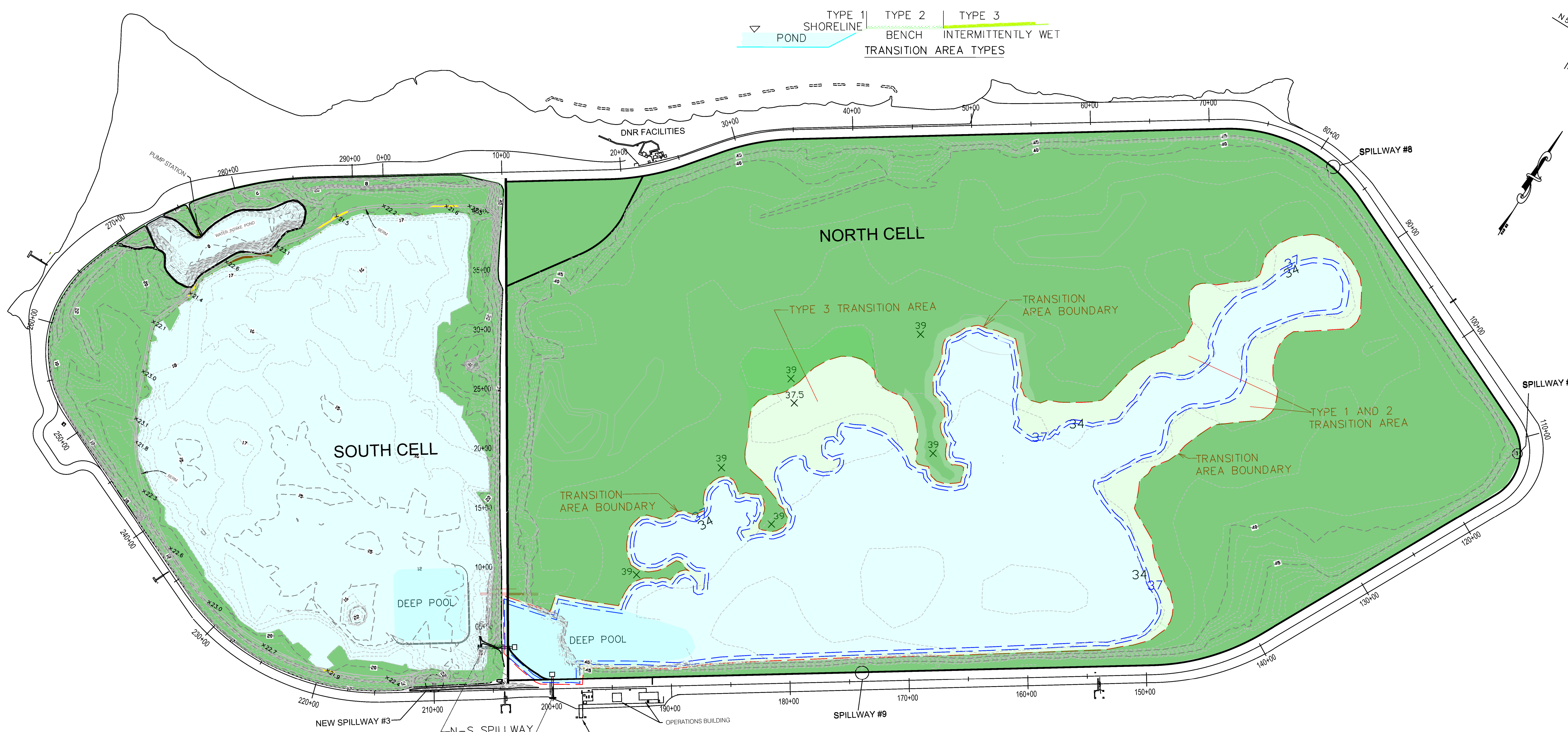
- Provide seasonal habitat diversity
- Provide passive recreation opportunities & amenities in both the North & South Cells
 - Maximize opportunities for wildlife observation and communing with nature
- Maximize pond depth and surface area to the extent practical in order to reduce invasive species and to control acidic soils
- Maximize use of onsite resources (soils, organic matter, etc.)
- Manage site surface water based on climatology & hydrology, including storm events
 - Where feasible, use existing spillways for surface water management
 - Provide for water transfer from North Cell to South Cell and vice versa, if and as required
 - Provide for water inflow from the Bay as makeup water during dry period to both the North and South Cells
- Minimize size of the upland areas to reduce costs
- Be sensitive to capital costs
- Strive to minimize long-term O&M costs

DNR elaborated on the July 19, 2018 letter sent to MPA outlining their goals for the North Cell development. These include:

- The optimal environmental condition would be a mix of habitat types ranging from open water to wetland into uplands.
- Series of uplands and open water areas that are intermixed with connections to share the available water resources.
- Mosaic of habitat types that would provide the optimal ecological benefits and provide a unique and engaging park visitor experience.
- Precipitation as primary water source with emergency pumping system for extended drought.

In conclusion, DNR stated that the priorities for the North Cell development should focus on: (1) migratory birds, (2) no pumping and (3) visitor experience. DNR would like to see a bigger pond in the North Cell, more similar to the size that was shown on the Concept 4B projected site conditions in the 2010 feasibility study. Ideally, DNR would like to see the North Cell to be 1/3 pond, 1/3 transitional wetland/upland habitat, and 1/3 upland habitat.

EXHIBIT C
Figure of Option D



HART MILLER ISLAND DMC
NORTH CELL - OPTION D



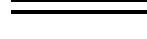







- POND AREA
- TRANSITION AREA
- UPLAND AREA

Scale: 1" = 400'

EXHIBIT D
Map of the South Cell

Hart-Miller Island South Cell Trail Map

LEGEND

-  Blue Cross Dike Loop 3.25 miles from State Park (round trip)
-  Red Holding Pond Loop 0.6 mile
-  White Berm Trail 1.25 miles
-  Shortcut Trails
-  State Property Boundary – Do Not Enter – Not Open to Public Use
-  8' Bench With Shading Roof
-  DNR Ranger Station and Buildings
-  Monument
-  Portable Toilet Unit
-  Trail Marker



1/3/2020