

AGREEMENT

BETWEEN

THE U.S. DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION

AND

THE STATE OF DELAWARE

FOR IMPLEMENTATION OF
THE CONSERVATION RESERVE ENHANCEMENT PROGRAM

I. PURPOSE

This Agreement is between the Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) and the State of Delaware (State) to implement a Conservation Reserve Enhancement Program (CREP) in connection with the federal Conservation Reserve Program (CRP). The primary objective of this CREP is enhancement of water quality through reduction of agricultural nutrients to further the goal of restoring designated uses of Delaware's water bodies. The secondary goal of this CREP is enhancement of wildlife habitats.

II. GENERAL PROVISIONS

The intended outcome is to allow, where deemed appropriate by USDA, CCC, and Delaware, certain acreage to be enrolled under the CREP. The waters of Delaware drain into the Chesapeake Bay, Delaware Bay, and the Delaware Inland Bays - all of which are National Estuaries. Delaware is within an area of special environmental sensitivity that is designated a CRP national conservation priority area. This designation makes all cropland eligible to be offered if all other eligibility requirements are met.

USDA, CCC, and the State of Delaware in cooperation with other Federal, State, and local authorities, seek to take actions that will help reduce the occurrence of sediment and nutrient runoff which contribute to excessive nutrient enrichment of the Chesapeake, Delaware and Inland Bays, as well as promote enhanced wildlife habitats. This agreement is not intended to supersede any rules or regulations, which have been, or may be promulgated by either USDA or CCC. This agreement is intended to facilitate existing authorities through a cooperative effort of USDA, CCC, and Delaware.

It is the intent of USDA, CCC and the State of Delaware that this CREP will address the following objectives:

- A. Facilitate nutrient and sediment reduction pursuant to Delaware's goal of restoring designated uses of surface waters.
- B. Provide conservation buffers on approximately 1200 miles of Delaware's waterways and drainage systems.
- C. Increase wildlife habitat acreage and create wildlife corridors in the targeted areas described in section IV A.

- D. Restore natural conditions for water temperature and dissolved oxygen in areas protected by riparian forested buffers.

III. AUTHORITY

A. Federal

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act)(16 U.S.C. 3830 et seq.), and the regulations at 7 CFR part 1410 to perform activities contemplated by this agreement. The 1985 Act authorizes new enrollments of land in the CRP through December 31, 2002.

Other authorities may also apply.

B. State

Funding authority for Delaware to enter into this Agreement is Section 15 (b)(2), General Assembly House Bill No. 750. State CREP funds must be obligated by June 30, 2002. See Exhibit 1.

IV. PROGRAM ELEMENTS

USDA, CCC and the State agree that:

- A. The Delaware CREP will consist of a special continuous sign-up CRP component and a State of Delaware incentive program. The Delaware CREP will seek to enroll up to 6,000 acres in the Chesapeake, Delaware and Inland Bays basin areas adjoining drainage ditches, streams and other water bodies identified as Category I impaired segments in Delaware's Unified Watershed Assessment and Watershed Restoration Priorities List (October 1, 1998), or areas adjoining drainage ditches contributing to Category I impaired segments in the Chesapeake, Delaware and Inland Bays basin areas.

- B. The eligible CRP practices and targeted acreage enrollment for the CREP are:

- (1) CP3A - Hardwood Tree Planting - 500 ac. - provided that plantings shall range from 200 to 300 trees per acre.
- (2) CP4D - Permanent Wildlife Habitat - 1,000 ac.- provided that practice acres for an individual contract will be limited to 5 ac. per tract or 5% of a tract, whichever is greater.
- (3) CP21 - Grassed Filter Strips - 3,000 ac., of which 2,000 ac. will be of grassed filter strips within those watersheds numbered 26 through 41 on Exhibit 2.
- (4) CP22 - Riparian Buffers - 1,000 ac., of which 500 acres will be of riparian buffers within those watersheds numbered 26 through 41 on Exhibit 2.
- (5) CP23 - Wetland Restoration - 500 ac.

These practices may be used in conjunction with each other.

- C. In determining CCC's share of the cost of practice establishment, CCC shall apply the customary CRP procedures and rules. All approved conservation plans shall be consistent with applicable CRP statutes and regulations, as well as specifications outlined in the applicable Natural Resources Conservation Service Field Office Technical Guide. Modifications to these Field Office Technical Guides, that meet the provisions of Handbook 2-CRP, and are adopted subsequent to the date of this agreement will be implemented as appropriate to achieve the overall purposes of this Agreement in a cost-effective manner.

- D. The term for continuous sign-up CRP contracts for acres enrolled in this CREP must be a minimum of 10 years, but may not exceed a maximum of 15 years.
- E. Producers eligible for this CREP will not be denied the opportunity to offer eligible acreage for enrollment in the regular CRP during general or continuous enrollment periods.
- F. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR part 1410, and the provisions of this Agreement, and such other rules and regulations as may apply. In the event of a conflict, the CRP regulations will be controlling.
- G. This Agreement shall remain in force and effect until December 31, 2002, or it may be terminated by USDA, CCC or the State upon written notice. Such termination will not alter responsibilities regarding existing contractual obligations under the CREP between participants and USDA or CCC, or between participants and the State.
- H. No lands may be enrolled under this program until the USDA's Deputy Administrator for Farm Programs, in consultation with USDA's Natural Resource Conservation Service, concurs with a detailed Delaware Amendment to Handbook 2-CRP, which will provide a thorough description of this program and applicable practices.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Determine producer eligibility for participation in the CREP consistent with the regulations at 7 CFR part 1410 and administer those CRP contracts that are executed.
- B. Pay 50 percent of the eligible reimbursable costs of CRP conservation practices. Reimbursements to the CREP participants from all sources may not exceed 100 percent of the cost of the practices implemented.
- C. Make an annual rental payment under the CRP contract for each eligible acre enrolled. The basic rental rate in all cases will be the normal CRP rate for non-irrigated cropland for the kind and location involved, and will be calculated as provided for in the existing Handbook 2-CRP. The basic rate will be adjusted as otherwise provided in this section.
- D. Make an annual incentive payment, as a percentage of the base CRP maximum annual rental rate otherwise normally applicable to the land enrolled in the CREP, as calculated under paragraph V. C., in the following amounts:
 - (1) for land to be established to practices CP22, Riparian Buffers and CP3A, Hardwood Tree Planting, 95 percent, provided that the total annual contract rental rate, inclusive of all incentives except the annual maintenance payment, shall not exceed \$150 per acre. Should the base annual rental rate, plus the full 130% of special federal/state CREP incentive payments provided for in this agreement exceed \$150 per acre, the federal incentive shall be 73% of the difference between \$150 less the base annual rental rate and the state incentive payment shall be 27% of the difference.
 - (2) for land established to practices CP21, Grassed Filter Strips; CP4D, Wildlife Habitat

Enhancement; and CP23, Wetland Restoration, 32 percent provided that the total annual contract rental rate, inclusive of all incentives except the annual maintenance payment, shall not exceed \$110 per acre. Should the base annual rental rate, plus the full 50% of special federal/state CREP incentive payments exceed \$110 per acre, the federal incentive shall be 64% of the difference between \$110 and the base annual rental rate, and the state incentive payment shall be 36% of the difference.

- E. Provide the annual maintenance payment for each acre enrolled in the same manner as with other CRP contracts.
- F. Provide eligibility and enrollment information to landowners concerning this CREP and technical assistance for the CREP in general.
- G. Provide, in a manner consistent with any existing CRP, additional assistance to producers whose practices are destroyed by circumstances beyond the producer's control.
- H. Permit successors-in-interest to contracts enrolled under this CREP subject to normal CRP statutes, regulations, and procedures.
- I. Administer contracts for lands approved under the CREP.
- J. Share appropriate data, in accordance with procedures, restrictions and exemptions established under the federal Freedom of Information Act, federal privacy laws and other applicable laws, with the State to facilitate State monitoring efforts.
- K. Develop conservation plans for treatment of enrolled acres to address identified natural resource problems by devoting eligible land to permanent vegetative cover or other comparable practices, and review conservation plans developed by others for producers offering to enroll eligible acreage in the CREP.
- L. Conduct annual compliance reviews according to Handbook 2-CRP to ensure compliance with the CRP contract.
- M. Coordinate with the State of Delaware in the development of a broad campaign for continuous public information and education regarding the CREP.

VI. STATE COMMITMENTS

Delaware agrees to:

- A. Contribute not less than 20 percent of the overall Federal program costs.
- B. Be responsible for:
 - (1) making direct cost-share payments to approved participants of 37.5 percent of the eligible reimbursable costs for all conservation practices established under this CREP;
 - (2) making an incentive payment, as a percentage of the base CRP maximum annual rental rate otherwise applicable to the land enrolled in the CREP (as calculated under paragraph V. C.), in the following amounts. State incentive payments will be accelerated to be paid in a lump sum within the first year of the contract:

a) for land established to practices CP22, Riparian Buffers; and CP3A, Hardwood Tree Planting, 35 percent, provided that the total annual contract rental rate, inclusive of all incentives except the annual maintenance payment, shall not exceed \$150 per acre. Should the base annual rental rate, plus the full 130% of special federal/state CREP incentive payments provided for in this agreement exceed \$150 per acre, the federal incentive shall be 73% of the difference of \$150 less the base annual rental rate and the state incentive payment shall be 27% of the difference;

b) for land established to practices CP21, Grassed Filter Strips; CP4D, Wildlife Habitat Enhancement; and CP23, Wetland Restoration, 18 percent, provided that the total annual contract rental rate, inclusive of all incentives except the annual maintenance payment, shall not exceed \$110 per acre. Should the base annual rental rate, plus the full 50% of special federal/state CREP incentive payments provided for in this agreement exceed \$110 per acre, the federal incentive shall be 64% of the difference of \$110 less the base annual rental rate and the state incentive payment shall be 36% of the difference;

(3) paying all costs associated with the annual monitoring program;

(4) providing technical assistance through the local soil and water conservation districts in the development of conservation plans, including installation of the identified practices. Development of conservation plans will be coordinated with the USDA's Natural Resources Conservation Service for producers offering to enroll eligible acreage in the CREP; and

(5) providing conservation planning assistance for the entire farm to enroll participants on a voluntary basis.

- C. Seek persons willing to offer eligible and appropriate land for enrollment in the CREP.
- D. Develop and implement, in coordination with USDA and CCC, a broad campaign for continuous public information and education regarding the CREP.
- E. Ensure that the CREP is coordinated with other agricultural and natural resource conservation programs at the State and Federal level.
- F. Prepare an annual report to the Deputy Administrator for Farm Programs, FSA within 60 days of the end of the Federal fiscal year (September 30) which includes, at a minimum, level of program participation, the results of the annual monitoring program, and a summary of non-federal CREP expenditures.

VII. OTHER PROVISIONS

- A. All commitments by USDA and the State are subject to the availability of funds. In the event either party is subject to a funding limitation, it will notify the other party expeditiously and any necessary modifications will be made to this Agreement.
- B. The Executive Vice-President, CCC, the Deputy Administrator for Farm Programs, FSA, and their successors or designees, are delegated the authority to carry out this Agreement for CCC and USDA consistent with the provisions of the 1985 Act, the regulations at 7 CFR part 1410 and other authorities as may apply. The Secretary of the Delaware Department of Natural Resources and Environmental Control, or his or her designee, is delegated authority to carry out this

Agreement for the State of Delaware.

- C. All CRP contracts under this CREP shall be subject to all limitations set forth in the regulations at 7 CFR Part 1410, including, but not limited to, such matters as economic use, transferability, violations and contract modifications. Agreements between owners or operators and the State may impose additional conditions not in conflict with those under the CRP regulations, but only if approved by CCC.
- D. Neither the State nor USDA shall assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.
- E. The State and USDA agree that each party will be responsible for its own acts to the extent required by law and shall not, in any case, be responsible or liable for the acts of any others and the results thereof.
- F. This agreement may be modified or extended upon mutual written agreement by the State and USDA.

EXHIBIT 1

HOUSE OF REPRESENTATIVES
139TH GENERAL ASSEMBLY
HOUSE BILL NO. 750

BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 1999; DEAUTHORIZING STATE GUARANTEED BOND AUTHORIZATIONS; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE; APPROPRIATING FUNDS FROM THE TRANSPORTATION TRUST FUND; DEAUTHORIZING AND REAUTHORIZING CERTAIN FUNDS OF THE TRANSPORTATION TRUST FUND; APPROPRIATING SPECIAL FUNDS OF THE DELAWARE TRANSPORTATION AUTHORITY; REVERTING AND REPROGRAMMING CERTAIN FUNDS OF THE STATE; APPROPRIATING GENERAL FUNDS AND SPECIAL FUNDS OF THE STATE; APPROPRIATING MONIES FROM THE TWENTY-FIRST CENTURY FUND; APPROPRIATING GENERAL FUNDS TO AN INFRASTRUCTURE INVESTMENT PLAN; SPECIFYING CERTAIN PROCEDURES, CONDITIONS AND LIMITATIONS FOR THE EXPENDITURE OF SUCH FUNDS; AND AMENDING CERTAIN PERTINENT STATUTORY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fourths of all members elected to each house thereof concurring therein):A

Section 1. Fiscal Year 1999 Capital Improvements Project Schedule Addendum The General Assembly hereby authorizes the following projects in the following amounts to be expended for the purposes set forth in this Section and as described in the Fiscal Year 1999 Governor's Recommended Capital Budget and Project Information document. Any authorization balance (excluding Transportation Trust Fund balances) remaining unexpended or unencumbered by June 30, 2001, shall be subject to reversion or deauthorization.

Section 14. Exxon Funds. It is the intent of the General Assembly that the monies appropriated in this Act and funds authorized for minor capital improvements in any annual appropriation act may be used to match Exxon funds for any purpose deemed appropriate by the State Energy Weatherization Committee and so long as the purpose does not contradict the purposes set forth in the Section 1 Addendum of this Act.

Section 15. Infrastructure Investment Plan. (a) It is the intent of the General Assembly that One Hundred Sixteen Million Dollars (\$116,000,000) be appropriated from General Funds to the Office of the Secretary, Department of Finance (25-01-00) to be used for long-term investments to promote economic and educational competitiveness and to protect Delaware's quality of life. Unless otherwise provided below, funds shall be deposited into the Twenty-First Century Fund as established by §6102A, Title 29, Delaware Code. Of the total appropriation, Sixty-Nine Million Dollars (\$69,000,000) shall be used to establish a Growth Management Fund to complement State and county land use goals by directing investments in existing communities and growth areas; and protecting critical farmland and open space from urban sprawl. The Cabinet Committee on State Planning Issues shall provide overall guidance and coordination to ensure that investments made by the Growth Management Fund are consistent with the State's land use policies. Funds shall be allocated as follows:

<u>Purpose</u>	<u>Amount</u>
Farmland Preservation	\$20,000,000
Open Space	\$26,000,000
Housing Development	\$ 8,000,000
Water/Wastewater	\$15,000,000

The remaining Forty Seven Million Dollars (\$47,000,000) shall be administered through the Department of Finance and shall be subject to the specific requirements established by law to govern expenditures for these purposes. No funds shall be used for agency overhead or personnel-related costs except as otherwise indicated in this Section. Funds shall be allocated as follows:

<u>Purpose</u>	<u>Amount</u>
Education Technology	\$13,000,000
Port of Wilmington	\$20,000,000
Riverfront Development	\$14,000,000

(b)(1) Funds Appropriated in subsection (a) for Farmland Preservation shall be available for expenditure to the Department of Agriculture as follows:

<u>Fiscal Year</u>	<u>Amount</u>
1999	\$5,000,000
2000	\$8,000,000
2001	\$7,000,000

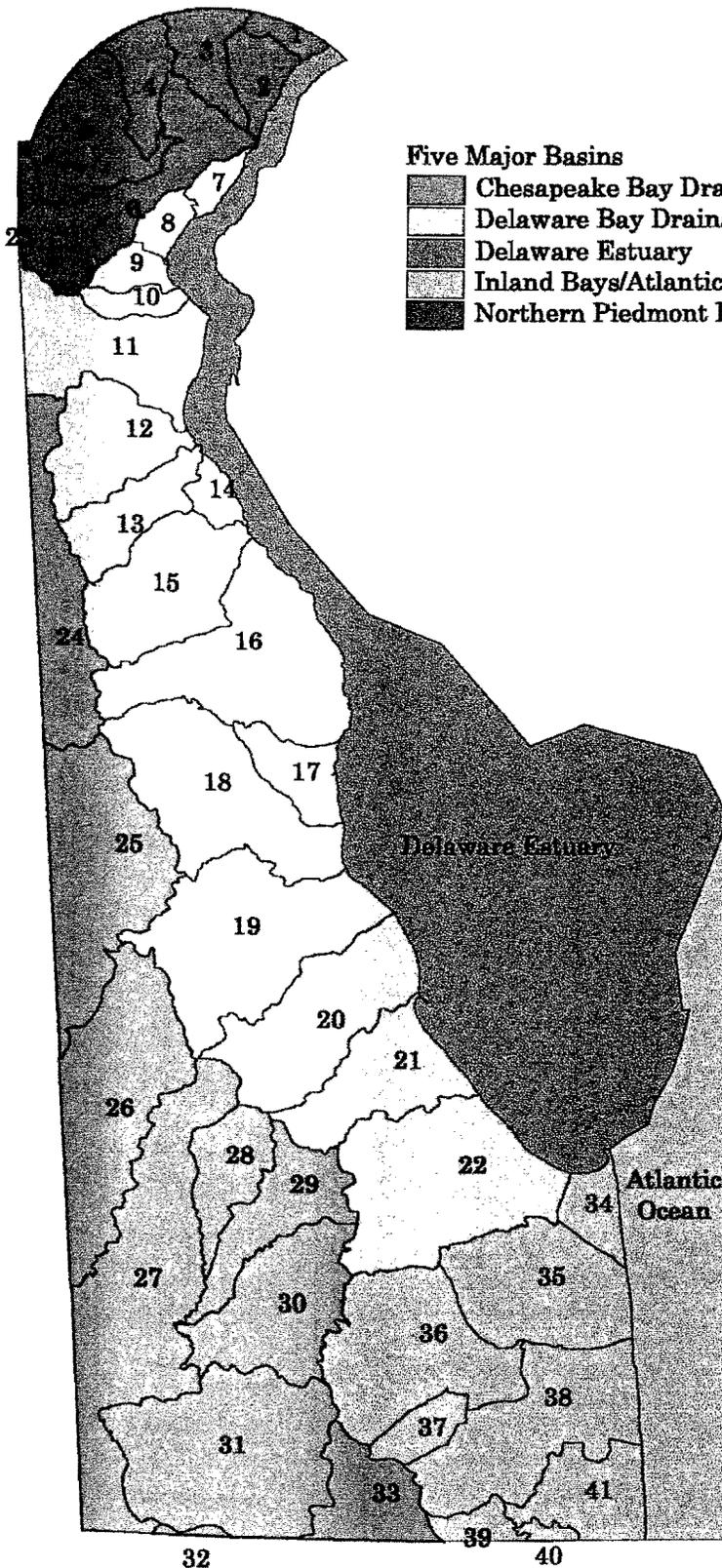
Farmland Preservation funds shall be used to support the purchase of development rights program to preserve quality farmland and ensure the continued viability of the Delaware agricultural industry. Prior to the distribution of these funds, the Foundation shall execute the provisions established in §§ 901-918, Title 3, Delaware Code and shall have approved by the Cabinet Committee on State Planning Issues the regulations and procedures adopted by the Delaware Agricultural Lands Preservation Foundation that are designed to ensure the protection of farmland that is being threatened by development.

Subject to the prior approval of the Cabinet Committee on State Planning Issues, the Delaware Agricultural Lands Preservation Foundation may waive part or all of the match required by this section for lands near targeted growth areas that are threatened by development. In addition, up to One Hundred Fifty Thousand Dollars (\$150,000) annually may be used for operational costs of the Agricultural Lands Preservation Foundation.

(b)(2) Of the funds appropriated for Farmland Preservation in subsection (a), up to \$1,600,000 shall be used by the Department of Natural Resources and Environmental Control for the Conservation Reserve Enhancement Program (CREP). These funds shall be used to match federal funds on a 20/80-match ratio. The objectives of the CREP program are to improve water quality, erosion control, and wildlife habitat in geographic regions, which have been adversely affected by agricultural activities. These funds shall be used to contract or cost-share with landowners for the planting of grass filterstrips, riparian buffers, and other environmental improvements that will greatly assist in the attainments of TMDL's in areas not meeting water quality standards. These funds shall not be subject to reversion until June 30, 2002. Should federal funding for this program not be secured, these funds shall be used for the purposes set forth in subsection (b)(1).

EXHIBIT 2

State of Delaware Drainage Basins



Five Major Basins

-  Chesapeake Bay Drainage
-  Delaware Bay Drainage
-  Delaware Estuary
-  Inland Bays/Atlantic Ocean
-  Northern Piedmont Drainage

PIEDMONT

1. Naamans Creek
2. Shellpot Creek
3. Brandywine Creek
4. Red Clay Creek
5. White Clay Creek
6. Christina River

DELAWARE BAY DRAINAGE

7. Delaware River
8. Army Creek
9. Red Lion Creek
10. Dragon Run
11. Chesapeake Delaware Canal
12. Appoquinimink River
13. Blackbird Creek
14. Delaware Bay
15. Smyrna River
16. Leipsic River
17. Little Creek
18. St. Jones River
19. Murderkill River
20. Mispillion River
21. Cedar Creek
22. Broadkill River

CHESAPEAKE BAY DRAINAGE

23. Elk Creek
24. Chesapeake Drainage System
25. Choptank River
26. Marshyhope Creek
27. Nanticoke River
28. Gum Branch
29. Gravely Branch
30. Deep Creek
31. Broad Creek
32. Wicomico
33. Pocomoke River

INLAND BAYS/ATLANTIC OCEAN

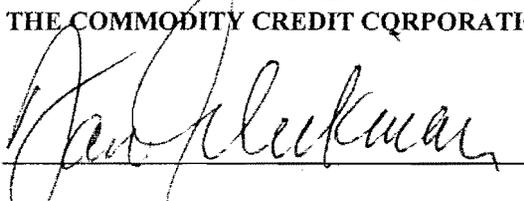
34. Lewes Rehoboth Canal
35. Rehoboth Bay
36. Indian River
37. Iron Branch
38. Indian River Bay
39. Buntings Branch
40. Assawoman
41. Little Assawoman

DELAWARE ESTUARY

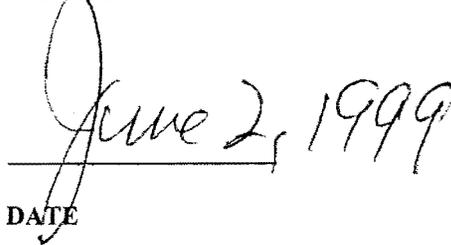


IT IS SO AGREED:

FOR THE U. S. DEPARTMENT OF AGRICULTURE AND
THE COMMODITY CREDIT CORPORATION



DAN GLICKMAN
Secretary of Agriculture
U. S. Department of Agriculture and
Chairman of the Board
Commodity Credit Corporation

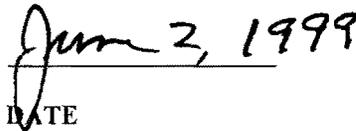


DATE

FOR THE STATE OF DELAWARE



TOM CARPER
Governor
State of Delaware



DATE

On June 2, 1999, the undersigned witnessed the signing of the Conservation Reserve Enhancement Program Agreement between the State of Delaware and the U.S. Department of Agriculture.

Barbara J. Sapp

Martha H. Cook

Michael T. Sauer

Richard L. Sapp

John F. Tarbutton

Nicholas G. Maguire

Wm. Donald Clifton

Alexandra Tsipouras