

**ORDINANCE**

**TO AMEND THE COMPREHENSIVE ZONING ORDINANCE OF ST. MARY'S COUNTY, MARYLAND, TO ALLOW NONADJACENT GROWTH ALLOCATION BY REPEALING AND REPLACING ORDINANCE 2019-40**

**WHEREAS**, Title 4 of the Land Use Article of the Annotated Code of Maryland empowers local jurisdictions to enact and administer a zoning ordinance, which ordinance is Chapter 285 of the Code of St. Mary's County; and

**WHEREAS**, in accordance with § 9-105 of the Local Government Article of the Annotated Code of Maryland, a notice of a public hearing was advertised on June 19, 2020, and June 26, 2020, in *The Enterprise*, a newspaper of general circulation in St. Mary's County, and a public hearing was held on July 7, 2020, to receive public comment on amending the Comprehensive Zoning Ordinance of St. Mary's County to allow nonadjacent growth allocation; and

**WHEREAS**, the Commissioners of St. Mary's County find that the proposed ordinance would be in the best interest of the health, safety, and welfare of the citizens of St. Mary's County;

**NOW THEREFORE, BE IT ORDAINED** by the Commissioners of St. Mary's County, that:

**SECTION I.** Section 41.9 of Chapter 41 of the St. Mary's County Comprehensive Zoning Ordinance is hereby repealed and replaced with the following:

**41.9. Growth Allocation.**

1. Description. Growth allocation is the process by which land in the Critical Area may be used to create new Intensely Developed Areas and Limited Development Areas. The original Growth Allocation acreage given to the County was 1,689.75 acres. The Growth Allocation acreage available to the County on the date that this Ordinance was adopted is 1,509.29 acres.
2. Standards. When locating new Intensely Developed or Limited Development Areas, the following standards apply:
  - a. Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area;
  - b. Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area;

- c. Except as otherwise specified below, a new Intensely Developed Area shall be at least 20 acres or adjacent to an existing Intensely Developed Area that together equals at least 20 acres; or
- d. Location criteria may vary from a, b, and c above, and a new Intensely Developed Area or Limited Development Area may be less than 20 acres, if the site:
- (1) Is located in an existing growth area, is zoned Corridor Mixed Use (CMX) or Village Mixed Use (VMX), and the project:
    - i. Is consistent with the goals and objectives of the adopted County Comprehensive Plan;
    - ii. Is currently served by public sewer; or the project will utilize a Best Available Technology (BAT) onsite sewage disposal system; and
    - iii. Has an overall economic benefit to the community; or
  - (2) Is not located in an existing growth area, is zoned Commercial Marine (CM), or Rural Commercial Limited (RCL), and the project:
    - i. Is for the purpose of establishing or reestablishing a commercial, industrial, or institutional use on a subject property that previously included the same or a different commercial, industrial, or institutional use that was in existence as of March 27, 1990; and
    - ii. Will, at any future time that an expansion or repair of an existing onsite sewage disposal system is necessary to serve the project, utilize a Best Available Technology (BAT) onsite sewage disposal system; and
    - iii. Will have an overall economic benefit to the community; or
  - (3) The project meets a public need for
    - i. Emergency or medical services including any facility that supports such services; or
    - ii. Providing offsite minor utilities necessary to continue or to reestablish a commercial, industrial, or institutional use that was in existence as of March 27, 1990, utilizing BAT for any necessary onsite sewage disposal system and/or Environmental Site Design for the management of storm water.
- e. No more than one-half of the County's allocated expansion may be located in Resource Conservation Areas.
- f. Locate a new Limited Development Area or Intensely Developed Area in a manner that minimizes its impacts to a Habitat Protection Area, optimizes benefits to water quality, and minimizes impacts to the defined land uses of the Resource



Conservation Area.

- g. New Intensely Developed or Limited Development Areas shall be so designated on the Official St. Mary's County Zoning Map and shall constitute an amendment to this program subject to review and recommendation by the St. Mary's County Planning Commission and approval by the Commissioners of St. Mary's County and the Critical Area Commission.
  - h. Locate a new Intensely Developed Area or Limited Development Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters, unless the applicant proposes, and the Critical Area Commission approves alternative measures for enhancement of water quality and habitat that provide greater benefit to the resources.
  - i. For a growth allocation for a residential subdivision, comply with the requirements and procedures under Environment Article, §9-206, Annotated Code of Maryland, and Land Use Article, Title 1, Subtitle 5, and §5-104, Annotated Code of Maryland.
3. Process. Applicants for growth allocation shall submit a request for growth allocation in accordance with the following:
- a. Applications for growth allocation shall be submitted to the Department and shall provide sufficient information to permit the Planning Commission to review the application for consistency with this Ordinance and in conformance with Code of Maryland Regulations (COMAR) Title 27. The subdivision history of parcels designated as RCA must be provided as part of the growth allocation application. The date of December 1, 1985, is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.
  - b. All applications for growth allocation shall be forwarded to the Planning Commission for review and shall include comments and recommendations from the Department. The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the Commissioners of St. Mary's County.
  - c. The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the Commissioners of St. Mary's County with a recommendation for approval or denial from the Planning Commission.
  - d. The Commissioners of St. Mary's County shall hold a public hearing on the request for growth allocation.
  - e. The Commissioners of St. Mary's County may establish conditions of approval that are consistent with the intent of the County's Critical Area Program.

- f. Upon approval of the growth allocation request by the Commissioners of St. Mary's County, the County shall send a request to the Critical Area Commission to utilize a portion of its growth allocation. The request shall be accompanied by the record of the public hearing conducted by the Commissioners of St. Mary's County.
- g. Following approval of the growth allocation request by the Critical Area Commission, the Commissioners of St. Mary's County may implement the change, and the applicant may proceed with the preparation of the final site plan or subdivision plat for recording in the County land records.
- h. Prior to approving the final site plan or subdivision plat, the Planning Commission or its designee shall ensure that all conditions of approval are incorporated into the final plan and development documents.
- i. Final subdivision plats and site plans shall be processed in accordance with the requirements of the St. Mary's County Comprehensive Zoning Ordinance and the St. Mary's County Subdivision Ordinance.
- j. The official St. Mary's County Zoning Map shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.
- k. The amount of growth allocation granted shall be deducted from the County's growth allocation total.

*See* Natural Resources Article § 8-1801.1 and COMAR § 27.01.02.05 Resource Conservation Areas.

4. Application requirements. Applications for growth allocation shall include the following information:
  - a. All information and documentation that addresses the standards and factors to be considered by the Critical Area Commission under § 8-1808.1(c)(3) of the Natural Resources Article of the Annotated Code of Maryland and COMAR § 27.01.02.06 Growth Allocation — Minimum Local Program Requirements;
  - b. A concept site plan or subdivision plat that meets the requirements of St. Mary's County Comprehensive Zoning Ordinance (CZO) § 41.9.5. All requests shall include a topographic map showing sensitive areas (defined at Chapter 71) and buffers within the area proposed for growth allocation. In addition, applications for specific projects shall be accompanied by a site plan, subdivision plan, or planned unit development application prepared according to the requirements of this Ordinance. Applications for specific projects shall also include a fiscal impact analysis of Critical Area development demonstrating that the project will have a net positive fiscal impact upon the County tax base and general operating and capital budgets;
  - c. An environmental features map that meets the requirements of CZO § 41.9.5;



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- d. An environmental report that demonstrates pursuant to COMAR § 27.01.02.06 Growth Allocation – Minimum Local Program Requirements that the project has been designed and will be constructed in compliance with all requirements of the proposed Critical Area land classification;
  - e. Where applicable, a preliminary review and comment from the Maryland Department of the Environment, Department of Natural Resources, Maryland Historical Trust, and U.S. Army Corps of Engineers regarding:
    - (1) Rare, threatened, and endangered species;
    - (2) Forest interior dwelling birds and colonial water birds;
    - (3) Anadromous fish and their propagation waters and any other aquatic species located onsite;
    - (4) Plant and wildlife habitat and historic waterfowl staging and concentration areas;
    - (5) Submerged aquatic vegetation;
    - (6) Riparian forests and tidal and nontidal wetlands; and
    - (7) Natural heritage areas and other historical and cultural resources; and
  - f. A map that shows the land area for which the applicant proposes a change of Critical Area land classification.
  - g. Verification that the amount of proposed growth allocation shown on the map is accurate and equal to the amount of growth allocation to be deducted from the County's existing allotment of growth allocation.
5. Site plan and environmental features map requirements. The concept site development plan and environmental features map required under CZO §§ 41.9.4.b. and 41.9.4.c. shall each include:
- a. The name of the project and its street address;
  - b. Tax map information that includes, as applicable, the tax map number, the block number, the parcel number, and lot number;
  - c. A site plan with a scale provided at 1"=10', 1"=20', 1"=30', 1"=40', 1"=50', 1"=

60', or 1"=100';

- d. Orientation;
- e. A vicinity map with the project site clearly identified;
- f. Existing parcel and tract boundaries or lot lines;
- g. The project boundary;
- h. The limits of disturbance;
- i. Proposed growth allocation envelope that meets the requirements of COMAR § 27.01.02.06-4(b): "Growth allocation envelope" means all of the proposed components of a growth allocation project that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria.
- j. All Critical Area boundaries, including existing and proposed land classifications and the land classification of all lots or parcels adjacent to the project site;
- k. The boundaries of the 100-year floodplain;
- l. Field run topography with contours at elevations of 2 feet or less;
- m. Vegetative cover information by acre or square footage, including field determination of existing forest and developed woodland cover, location of proposed forest and developed woodland clearing; and as applicable, the location of proposed afforestation and reforestation areas;
- n. Soil features of the project and where each soil type is located;
- o. Field determination of each intermittent stream and each perennial stream;
- p. A delineation of the minimum 100-foot Critical Area Buffer as measured from the mean high- water line of tidal waters or the landward edge of a tidal wetland or a tributary stream;
- q. As applicable and in accordance with the requirements of COMAR § 27.01.09.01 Buffer or this Ordinance, a delineation of any expanded Critical Area Buffer that is necessary because of a contiguous slope of 15 percent or greater or the presence of hydric soil, highly erodible soil, or a nontidal wetland;
- r. When converting from a Resource Conservation Area to a Limited Development Area or an Intensely Developed Area, the location and extent of a 300-foot minimum setback (COMAR § 27.01.02.01: "300-foot setback" means an area that is at least 300 feet in width, as measured from the landward boundary of tidal waters or wetlands, that is provided on a growth allocation site in order to provide habitat

and stormwater benefits to supplement benefits required in accordance with COMAR § 27.01.09).

- s. Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a nontidal wetland, that is less than 2 years old, including the 25-foot Critical Area Buffer from that nontidal wetland;
  - t. Unless the Critical Area Commission determines an otherwise acceptable period of time, a field-delineated location and description of the extent of a tidal wetland, that is less than 2 years old, including the delineation of State and private tidal wetland boundaries;
  - u. Identification and location of all wildlife habitat and plant habitat, including any nesting site of colonial nesting water birds, an historic waterfowl staging and concentration area, riparian habitat, habitat of forest interior dwelling birds, an area of State or local significance, and a natural heritage area;
  - v. Identification and location of habitat of threatened and endangered species, including a species in need of conservation;
  - w. Identification and location of anadromous fish propagation waters;
  - x. Location of existing and proposed area of lot coverage, including identification of a building, road, parking lot, and any other area that contributes to lot coverage;
  - y. Location of any other proposed development feature, including an outlot, storm drain and outfall, utility connection, onsite sewage disposal system, stormwater management system, shore erosion control measure, and pier;
  - z. Location of a path or walkway, including those exempt from lot coverage requirements;
  - aa. Location of an existing or proposed mitigation area that is required because of an impact on forest, developed woodland, wetland, Critical Area Buffer, or other habitat protection area; and
  - bb. If applicable, the identification and location of agricultural land, a surface mining site, natural park, dredging activity, and dredge material disposal area, as well as the boundary and area of an existing easement, the identity of the easement holder, and any restriction on development as a result of the easement.
6. Deduction. The County shall deduct acreage from its growth allocation reserves using the following methodology:
- a. For the entire acreage of the parcel if, as of December 1, 1985, in the Chesapeake Bay Critical Area:



- (1) The parcel was less than 20 acres in the RCA; or
  - (2) The RCA parcel was at least 20 acres but the application does not qualify for use of a growth allocation envelope under (b) below; or
- b. For the number of acres approved within a growth allocation envelope, if:
- (1) Areas that support the proposed development are included within the growth allocation envelope as defined in COMAR § 27.01.02.06-4.A.: Deduction of Growth Allocation Acreage, Definitions, Growth Allocation Envelope.
  - (2) When converting:
    - a. A resource conservation area the remaining resource conservation area on the parcel outside the growth allocation envelope is at least 20 acres; or
    - b. A limited development area to a new intensely developed area, the new intensely developed area is at least 20 acres unless a lesser amount is approved in accordance with CZO § 41.9.2.d.
- c. The County may not approve a growth allocation development envelope in the RCA, unless the County determines, based on subdivision and development history, that given the existing dwelling units and the development potential on the parcel outside the growth allocation envelope, there remains sufficient resource conservation area acreage outside the envelope to support a minimum density of one dwelling per 20 acres.
- d. The County may exclude the following from a growth allocation deduction:
- (1) The remaining RCA outside the growth allocation envelope if it is at least 20 acres;
  - (2) The remaining RCA outside the growth allocation if it is less than 20 acres, and is adjacent and contiguous to a permanently protected RCA on another parcel and the sum of the combined area is at least 20 acres;
  - (3) The acreage of a 300-foot setback, even when it is less than 20 acres;
  - (4) The acreage within the Buffer, when it is within a 300-foot setback; and
  - (5) The acreage of tidal wetlands on the parcel.
- e. The County is limited to one growth allocation envelope per parcel; unless
- (1) Deduction of more than one growth allocation envelope will provide a water quality or habitat benefit; and
  - (2) The Critical Area Commission approves more than one growth allocation



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envelope.

- f. When a 300-foot setback is not provided, the County shall require deduction of the area of the Buffer.
- g. The acreage of the area deducted shall match the acreage of the area shown on the Official St. Mary's County Zoning Map as amended by the County and Critical Area Commission.

**SECTION II.** This Ordinance shall be submitted to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

**SECTION III.** This Ordinance shall be effective on the date of its approval by the Maryland Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

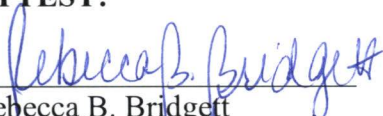
Those voting Aye: 5

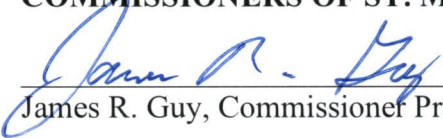
Those voting Nay: 0

Those Abstaining: 0

Date of Adoption: July 21, 2020

Effective Date: August 4, 2020

**ATTEST:**  
  
 Rebecca B. Bridgett  
 County Administrator


**COMMISSIONERS OF ST. MARY'S COUNTY**  
  
 James R. Guy, Commissioner President

  
 Eric Colvin, Commissioner

  
 Michael L. Hewitt, Commissioner

  
 Todd B. Morgan, Commissioner

  
 John E. O'Connor, Commissioner

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:  
  
 David A. Weiskopf  
 County Attorney

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DOCUMENT VALIDATION

LR - Government  
Instrument 0.00  
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ST. MARY'S  
Instrument List: Other  
Describe Other:  
ORDINANCE #2020-36  
Ref: COMM 28/342

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Circuit Court for St. Mary's County  
PO Box 676  
41605 Courthouse Drive  
Leonardtown, MD 20650  
(301) 475-7844