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COUNTY ORDINANCE NO. 99-14

**A BILL ENTITLED**

AN ACT Concerning the Repeal and Readoption of Sections 14-171, 14-172, 14-173, 14-174, 14-176 and 14-177 of the Code of Public Local Laws of Queen Anne's County.

FOR THE PURPOSE of correcting drafting errors in the adoption of County Ordinance 99-02.

SECTION I

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND that Sections 14-171, 14-172, 14-173, 14-174, 14-176 and 14-177 of the Code of Public Local Laws of Queen Anne's County be repealed and reenacted to read as set forth on the attached.

SECTION II

BE IT FURTHER ENACTED that this Act shall take effect on the forty-sixth day following its passage.

Introduced By: Marlene Davis

Date: August 3, 1999 10:30 a.m.

Vote: 3 Yea \_\_\_\_\_ Nay \_\_\_\_\_

EFFECTIVE DATE - Oct 1, 99

**Final Draft Format**

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**Subpart 2. Special Provisions Relating to Development Area Classification and Other Amendments in the Critical Area District**

**14-171. Amendments to this subtitle, development area classifications, and the critical area boundary.**

(a) ***In general.***

The provisions of this subtitle, the boundaries of the Critical Area District, the development area classification, i.e., IDA, LDA or RCA, and the Buffer Exemption Area boundaries may be changed by amendment in accordance with the provisions of this subpart. All such amendments shall be approved by the Critical Area Commission.

(b) ***Change of development area classification - Mistake or growth allocation.***

The County Commissioners may from time to time change the development area classification of properties in the critical area where it is demonstrated that a mistake was made in the original designation or when growth allocation is used by the County. When proposing a change of development area classification, i.e., Intensely Developed Area (IDA), Limited Development Area (LDA), or Resource Conservation Area (RCA), other than by changing a classification through the growth allocation process, the County Commissioners shall not approve amendments unless it is found that there was a mistake in the original classification.

(c) ***Change of development area classification - Growth allocation.***

The County Commissioners may use a portion of the County's growth allocation to amend the development area classification of a property located in the Queen Anne's County critical area. Growth allocation may be used to change the land management classification from RCA to LDA or IDA, or from LDA to IDA without regard to the "mistake" standard established above.

(d) ***Amendment of critical area - Deletion of area.***

The County Commissioners may from time to time elect to amend the critical area boundary to delete areas of the County from the critical area when it can be demonstrated that the critical area, as mapped on the official area maps, is incorrectly drawn.

(e) ***Amendment of critical area - Addition of area.***

The County Commissioners may from time to time elect to amend the critical area to add areas to the critical area beyond that which is delineated on the official critical area maps.

(f) ***Addition of Buffer Exemption Areas.***

The County Commissioners may from time to time elect to amend the critical area maps to add Buffer Exemption Areas where it can be demonstrated that the pattern of residential, industrial, commercial or recreational development present as of December 1, 1985 prevents the Buffer from fulfilling its intended purposes.

*Drafter's Note: This section formerly was § 7008 of the County Critical Area Ordinance.*

*In subsection (a) of this section, the reference to "this subtitle" is substituted for the former reference to "this Ordinance" to reflect the recodification of the County Critical Area Ordinance as this subtitle.*

*The only other changes are stylistic.*

*Defined terms: See § 14-111*

**14-172. Amendments to correct an error in the mapping of the critical area boundary.**

(a) ***Minimum area required.***

The critical area boundary as amended to correct a mistake in the official critical area maps shall, at a minimum, encompass all areas as set forth in § 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

(b) ***Required evidence.***

Evidence sufficient to warrant a determination of a mistakenly drawn critical area boundary shall be based on, and substantiated by:

- (1) the 1972 State Wetland Maps; or
- (2) newer State Wetland Maps prepared by the State.

(c) ***Approval of Critical Area Commission required.***

Such amendment shall be approved by the Critical Area Commission.

*Drafter's Note: This section formerly was § 7009 of the County Critical Area Ordinance.*

*The only changes are stylistic.*

*Defined terms: See §14-111*

**14-173. Amendments to add areas to the critical area.**

(a) ***Procedure.***

Addition of areas to the critical area shall be processed as amendments to the official critical area maps as set forth in §14-174 of this subtitle.

(b) ***Approval of Critical Area Commission required.***

Such amendment shall be approved by the Critical Area Commission.

*Drafter's Note: This section formerly was § 7010 of the County Critical Area Ordinance.*

*In subsection (a) of this section, the reference to "§ 14-177 of this subtitle" is substituted for the former reference to "Section 7012 to reflect the current location of that provision.*

**14-174. Amendment procedures.**

(a) ***Initiation.***

Text or map amendments may be initiated by resolution of the Planning Commission, County Commissioners, or by a petition of the property owner filed with the County Commissioners.

(1) All petitions filed by property owners for map amendments shall be accompanied by the information required in § 18-1-297 of the Land Use and Development Title of the Queen Anne's County Code and a fee prescribed by the County Commissioners.

(2) Any amendment to this Title, including an amendment to the Critical Area maps, that is proposed by a property owner or group of owners acting as a private citizens' group shall be filed with the office of the Clerk to the County Commissioners, for consideration by the County Commissioners, only during the first five business days in the month of February and the first five business days in the month of August of each calendar year. Map amendment and text amendment petitions will not be accepted by the Clerk to the County Commissioners at any other time during the year.

(i) Petitions for map amendments utilizing growth allocation are exempt from Section 14-174 (a)(2).

(b) ***Planning Commission -- Referral, investigation and recommendation***

All proposed map and text amendments that are not initiated by the Planning Commission shall be referred to the Planning Commission for investigation and recommendation. The Planning Commission shall first hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. In addition, the Planning Commission shall post notice of their public hearing on the property for which the amendments are requested and, to the extent possible, based on the best available information, notify all property owners immediately contiguous to the property of the hearing date, time, and place.

(c) ***Planning Commission report and recommendations.***

The Planning Commission shall forward its report and recommendations to the County Commissioners within 60 days of referral, unless an extension of time is granted by the County

Commissioners. The recommendations of the Planning Commission shall include discussion of the matters required to be considered by the County Commissioners.

(d) ***County Commissioner conceptual approval.***

At their regularly scheduled meeting the County Commissioners shall evaluate the proposed amendment on the basis of the report and recommendations of the Planning Commission and either conceptually approve or disapprove the proposed amendment.

(e) ***Critical Area Commission approval.***

All proposed amendments that receive conceptual approval by the County Commissioners will be forwarded to the Critical Area Commission for review and approval. If the proposed amendment is approved by the Chesapeake Bay Critical Area Commission, it shall proceed to the County Commissioners for final approval.

(f) ***Final approval by the County Commissioners.***

(1) After receiving notification from the Critical Area Commission that the proposed amendment has been approved pursuant to the provisions of Section 8-1809 of the Natural Resources Article of the Annotated Code of Maryland, the County Commissioners shall hold a public hearing on the proposed amendment which shall not be more than 90 days after notification of approval by the Critical Area Commission. Such hearing shall allow parties of interest and citizens an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County.

(2) In addition to other matters pertinent to the proposed amendment, the County Commissioners shall give specific consideration to the following matters:

(i) The purposes set forth in Section 8-1800, et seq. of the Natural Resources Article of the Annotated Code of Maryland, the Queen Anne's County Critical Area Program the Comprehensive Plan and this Act;

(ii) The recommendations of the Planning Commission;

(iii) The relation of the proposed amendment to the Queen Anne's County Critical Area Program, the Comprehensive Plan, the Growth Sub-Area Plans; and

(iv) The testimony and other evidence presented at the public hearing.

(3) If the Planning Commission has recommended the adoption of an amendment and the County Commissioners propose to adopt an amendment which changes or departs from those recommendations, the proposal of the County Commissioners shall be referred to the Planning Commission, in writing, for its further recommendations and to the Critical Area Commission for

review and approval. If such recommendations are not received by the County Commissioners within 90 days after the proposal has been transmitted to the Planning Commission and accepted by the Critical Area Commission, the Commissioners may proceed to take final action without such recommendations.

(4) If the County Commissioners propose to adopt an amendment which is substantially different from both the proposed amendment and the recommendations of the Planning Commission as described in the published notice, a new public hearing shall be held. Notice of such hearing shall include notice of the amendment as proposed by the County Commissioners and any recommendations of the Planning Commission, including those made after any referral required by §14-174(f)(3).

(5) An amendment shall not be effective until after it is approved by the Critical Area Commission and not until 45 days after approval by the County Commissioners.

(g) ***Map Amendments.***

The Official Critical Area Map(s) will be amended to reflect the new development area designation when the amendment becomes effective.

*No other changes are made.*

*Defined terms: See § 14-111*

**14-175. Reserved**

**Subpart 3. Growth Allocation**

**14-176. Growth allocation process.**

The County's growth allocation will be used to amend the development area classification on the official critical area maps on a project-by-project basis. The following procedures will be followed in determining if a site qualifies for growth allocation:

(1) Prior to submitting a petition to the County Commissioners for map amendments utilizing growth allocation, applicants shall submit a sketch or concept plan to the Planning Commission together with a fee as prescribed by the Planning Commission. The Planning Commission will review the sketch or concept development plan for consistency with the County's Critical Area Program and will provide technical comments and recommendations. The applicant shall incorporate the Planning Commission's technical comments and recommendations into the petition filed with the County Commissioners.

(2) All petitions for map amendments utilizing growth allocation shall be accompanied by a concept site plan or subdivision sketch plat, prepared in conformity with the requirements of

Queen Anne's County Code in addition to any information required by § 14-177 (a) of this subtitle.

(3) In approving a map amendment utilizing growth allocation, the County Commissioners may establish additional conditions of approval that are consistent with the intent of the Queen Anne's County Critical Area Program.

(4) Review Criteria: The following review criteria will guide the selection of projects that may be assigned growth allocation:

( i ) Proposed development projects using growth allocation must be determined to be consistent with the Queen Anne's County Comprehensive Plan, the Queen Anne's County Critical Area Program, and the Growth Sub-Area Plans.

(ii) Proposed development projects that implement specific development or redevelopment objectives of the Comprehensive Plan or a Growth Sub-Area Plan shall be given priority for growth allocation and growth allocation is set aside for implementation of these projects in the Growth Management Pool.

(iii) Proposed development projects determined by the County to be of substantial economic benefit and located in a designated growth area shall be given priority for growth allocation and growth allocation is set aside for implementation of these projects in the Growth Management Pool.

(iv) Proposed development projects located outside of designated growth areas may be assigned growth allocation if they are a commercial, industrial, residential or institutional project determined to be of substantial economic benefit to residents of the County and/or meet a recognized public need. Growth allocation for implementation of these projects may be from either the General Pool or the Growth Management Pool.

(5) Minimum Mandatory Design Standards: Once the maximum permitted density of development has been determined, the proposed project must demonstrate that it will meet or exceed the following design standards in order to be approved.

( i ) All applicable requirements of the Queen Anne's County Code, the Subdivision Regulations and the Queen Anne's County Chesapeake Bay Critical Area Program and Act have been met.

(ii) A land management classification change has been approved by the County Commissioners and the Critical Area Commission.

(iii) The design of the development enhances the water quality and resource and habitat values of the area, e.g., results in additional planting of forest cover in the buffer or implementation of best management practices on portions of the site to be retained in agriculture use.

(iv) The development incorporates the comments and recommendations of the

County and the Maryland Fish, Heritage and Wildlife Administration in the project design.

(v) The developer executes restrictive covenants that guarantee maintenance of any required open space areas.

*Drafter's Note: This section formerly was § 7011 of the County Critical Area Ordinance.*

*In item (2) of this section, the reference to "§ 14-177(a) of this subtitle" is substituted for the former reference to "Section 7012A" to reflect the current location of that provision.*

*The only other changes are stylistic.*

*Defined terms: See § 14-111*

**14-177. Growth allocation petition procedures.**

(a) ***Initiation.***

A request for growth allocation petition may be initiated by a petition of the property owner filed with the County Commissioners. All petitions for growth allocation filed by property owners shall be accompanied by the information required in § 18-1-297 of the Queen Anne's County Code and a fee prescribed by the County Commissioners.

(b) ***Planning Commission - Referral, investigation and recommendation.***

All growth allocation petitions shall be referred to the Planning Commission for investigation and recommendation. The Planning Commission shall first hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County. In addition, the Planning Commission shall post notice of their public hearing on the property for which growth allocation is requested and, to the extent possible based on the best available information, notify all property owners immediately contiguous to the property of the hearing date, time and place.

(c) ***Planning Commission report and recommendations.***

The Planning Commission shall forward its report and recommendations to the County Commissioners within 60 days of referral, unless an extension of time is granted by the County Commissioners. The recommendations of the Planning Commission shall include discussion of the matters required to be considered by the County Commissioners.

(d) ***County Commissioners conceptual approval.***

At their regularly scheduled meeting the County Commissioners shall evaluate the growth allocation petition on the basis of the report and recommendations of the Planning Commission and either conceptually approve or disapprove the growth allocation petition.

(e) ***Critical Area Commission Approval.***

All growth allocation petitions that receive conceptual approval by the County Commissioners will be forwarded to the Critical Area Commission for review and approval. If the growth allocation petition is approved by the Critical Area Commission, it shall proceed to the County Commissioners for final approval.

(f) ***Final approval by the County Commissioners.***

(1) After receiving notification from the Critical Area Commission that a growth allocation petition has been approved pursuant to the provisions of Section 8-1809 of the Natural Resources Article of the Annotated Code of Maryland, the County Commissioners shall hold a public hearing on the growth allocation petition which shall not be more than 90 days after notification of approval by the Critical Area Commission. Such hearing shall allow parties of interest and citizens an opportunity to be heard. As least 14 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County.

(2) In addition to other matters pertinent to the growth allocation petition, the County Commissioners shall give specific consideration to the following matters:

(i) The purposes set forth in Section 8-1800, et seq. of the Natural Resources Article of the Annotated Code of Maryland, the Queen Anne's County Critical Area Program, the Comprehensive Plan and the Queen Anne's County Code;

(ii) The recommendations of the Planning Commission;

(iii) The relation of the growth allocation petition to the Queen Anne's County Critical Area Program, Comprehensive Plan, Growth Sub-Area Plans; and

(iv) The testimony and other evidence presented at the public hearing.

(3) If the Planning Commission has recommended approval of a growth allocation petition and the County Commissioners propose to approve a growth allocation petition which changes or departs from those recommendations, the proposal of the County Commissioners shall be referred to the Planning Commission, in writing, for its further recommendations and to the Critical Area Commissioners for review and approval. If such recommendations are not received by the County Commissioners within 90 days after the proposal has been transmitted to the Planning Commission and accepted by the Critical Area Commission, the Commissioners may proceed to take final action without such recommendations.

(4) If the County Commissioners propose to approve a growth allocation petition which is substantially different from the proposed growth allocation petition and the recommendations of the Planning Commission as described in the published notice, a new public hearing shall be held. Notice of such hearing shall include notice of the amended growth allocation petition as proposed by the County Commissioners and any recommendations of the Planning

Commission, including those made after any referral required by §14-177(f)(3).

(5) A growth allocation petition shall not be effective until after it is approved by the Critical Area Commission and not until 45 days after approval by the County Commissioners.

(g) ***Map amendment.***

The Official Critical Area Map(s) will be amended to reflect the new development area designation when the approved growth allocation petition becomes effective.

(h) ***Use of approved growth allocation.***

(1) Successful projects granted Growth Allocation will be submitted for final site plan or preliminary and final subdivision approval as per requirements of the Queen Anne's County Code.

(2) If all construction associated with a nonresidential project which was awarded growth allocation has not been substantially completed within 24 months of site plan approval, then the growth allocation award shall be null and void. If road dedication to the County has not been completed for a residential project within 36 months of final subdivision or site plan approval, then the growth allocation award shall become null and void. Further, the award shall be recaptured by the County unless an extension is granted by the County Commissioners. Extensions cannot be granted for more than one (1) year at any one time.

***14-178. Reserved.***

***14-179. Reserved.***