

**ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT**

*Jessica S.B. Andritz, Esq. Director
Courtney Jenkins, AICP, Deputy Director*



COMMISSIONERS OF ST. MARY'S COUNTY:
James R. Guy, President
Michael R. Alderson Jr, Commissioner
Eric S. Colvin, Commissioner
Michael L. Hewitt, Commissioner
Scott R. Ostrow, Commissioner

Date July 10, 2023

VIA FIRST-CLASS US MAIL

CATHERINE FRANKS
HUGHES AND JOAN PHILLIP
3221 13TH ROAD S
ARLINGTON, VIRGINIA 22204-4328

Re: Type: Critical Area Planting Agreement

Permit #: # 22-1995
Property Address: 18885 MCKAYS BEACH ROAD
LEONARDTOWN, MD 20650

Dear Catherine Franks, Hughes and Joan Phillip,

The St. Mary's County Department of Land Use and Growth Management requests completion of the attached Critical Area Planting Agreement, the identified plantings were to be installed by May 31, 2023. According to our records, a satisfactory inspection has not been scheduled, completed and approved by our Inspections Division.

Please contact our office within thirty (30) days of the date on this letter to discuss a resolution to this matter. Should you wish to schedule an inspection, contact the Inspections Coordinator, at 301-475-4200, Ext. 1580. Should you have additional questions regarding this letter, please contact Shelia Smith, at 301-475-4200, Ext. 1503.

Sincerely,

Shelia Smith
Operations Manager

Cc: John Houser, County Attorney

**ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT**

William B. Hunt, AICP, Director

Courtney Jenkins, AICP, Acting Deputy Director



COUNTY COMMISSIONERS OF ST. MARY'S:

James R. Guy, President

Eric Colvin, Commissioner

Michael L. Hewitt, Commissioner

Todd B. Morgan, Commissioner

John E. O'Connor, Commissioner

CRITICAL AREA PLANTING AGREEMENT

THIS CRITICAL AREA PLANTING AGREEMENT (“Agreement”) made this **TWENTIETH DAY OF SEPTEMBER 2022** by **JOAN HUGHES** (“Owner”) and the Commissioners of St. Mary’s County, Maryland, (“County”), a body corporate and politic and political subdivision of the State of Maryland (collectively, the “Parties”). The Parties have expressly entered into this Agreement to protect and preserve fish, plant, and wildlife habitats, to improve water quality, and to mitigate the adverse impacts of development in the designated area(s) pursuant to the St. Mary’s County Chesapeake Bay Critical Area Program **LDA** Overlay Zone at the property described as: **Tax Map 61A, Parcel 32, Subdivision 384**, and located at **18885 McKAYS BEACH ROAD** and the Parties herein agree to the conservation measures listed below in accordance with the Chapter 27 of the Maryland Code of Maryland Regulations (“COMAR”) “Criteria for Local Critical Area Program Development” and Chapters 41, 71, and 72 of the St. Mary’s County Comprehensive Zoning Ordinance, and with all other applicable county, state, and federal laws, and regulations for conservation of the natural resources within St. Mary’s County.

WITNESSETH:

The Owner seeks approval of the Agreement, the application, and plans submitted under **22-1995** that consists of the following element:

1. Minor Buffer Management Plan.

The County seeks to ensure that adequate conservation measures are performed under the terms of this Agreement by the Owner for the installation, maintenance, and preservation of the natural environment in St. Mary’s County.

IN CONSIDERATION of the mutual promises of the parties and the following terms and conditions, and in further consideration of this Critical Area Planting Agreement **22-1995** and other applicable plans as enumerated herein and the issuance of permits for the work proposed to be done by the Owner, the Parties agree as follows:

Minor Buffer Management Plan

1. The required mitigation is **FOUR HUNDRED SQUARE FEET** per Chapters 41, 71, and 72 of the St. Mary’s County Comprehensive Zoning Ordinance.

1. A cash bond, surety bond or letter of credit is required for all non-residential projects/permits and for residential projects/permits when total mitigation exceeds 5,000 square feet or before a Certificate of Occupancy can be issued for residential permits/projects when the total mitigation is less than 5,000 square feet. Therefore, the Owner has provided, OR will provide before a Certificate of Occupancy can be issued, a bond in the amount of 400 x \$1.50 = SIX HUNDRED DOLLARS (\$600.00) to the County.
2. The Owner agrees to mitigate the adverse impact of development incurred by the proposed project by planting the following: **WITHIN THE 100' BUFFER:**
 - i. **TWO (2)**, Minimum 2-inch caliper, canopy trees.

Planting Date, Sequence, Monitoring, and Maintenance Provisions

1. Required plantings shall be installed by **MAY 31, 2023**. Upon completion of the plantings, the applicant shall notify the St. Mary's Department of Land Use and Growth Management for an inspection at 301-475-4200 x 1500.
2. All plantings shall be native to the Coastal Plain based on the U.S. Fish and Wildlife Service publication titled Native Plants for Wildlife Habitat and Conservation Landscaping, Chesapeake Bay Watershed.
3. Remove turf grass, weeds, and debris. Prepare site for planting by tilling, digging, and incorporating topsoil or other soil conditioners.
4. Prior to planting, protect plants from adverse weather conditions after delivery until they are planted. Plants should be planted within 72 hours of delivery.
5. Install plants in accordance with nursery specifications in the locations shown on the plan. Plant the largest stock first.
6. Prune only dead or broken branches on new stock prior to installation.
7. Stake trees only if necessary due to site conditions or stock size.
8. Water plants thoroughly.
9. Mulch around new plants to maintain moisture levels and reduce competition from weeds and invasive species.
10. An extension of the planting agreement for one planting season may be granted upon written request to include justification demonstrating hardship or special conditions that prevented completion by the date specified above.

11. If there are any deficiencies at the time of the final inspection, a stop work order will be posted and no further work shall be done, nor shall a Certificate of Occupancy be issued on the project, until such deficiencies are corrected to the terms of this agreement and/or payment of a bond in the amount of the estimated cost of the required plantings is posted.
12. If the conservation measures, as practiced in the field are inadequate, the County shall require revisions to the Critical Area Planting Agreement before any further work may be done on the project. The County may issue a stop work order, where appropriate, to ensure that the conservation measures of the Owner are in conformity with the approved terms of this agreement and the approved site plan.
13. Survival - The landscaping stock will be monitored for two (2) years from the planting date. Survival of 100% of all landscaping stock is required. This agreement includes replanting after one year if necessary to achieve the survival rate. The bare root seedlings or whips, if part of this planting agreement, will be monitored for five (5) years from the planting date. Survival of 50% of all bare root seedlings or whips is required. Any plants that do not survive during the monitoring period must be replaced.
14. Two (2) years from the planting date, the landscaping stock shall be inspected by St. Mary's County Department of Land Use and Growth Management and assessed to determine the need for replacement plantings. Five (5) years from the planting date, the bare root seedlings, or whips, if part of this agreement, shall be inspected by St. Mary's County Department of Land Use and Growth Management and assessed to determine the need for replacement plantings. If either inspection determines that the rate of survival is not adequate, the financial assurance will not be released, the monitoring period may be extended, and additional inspections will be required.
15. One year and eleven months after the initial approved planting inspection, the Owner shall contact the St. Mary's Department of Land Use and Growth Management at (301) 475-4200 ext. 1500 to schedule a final survival inspection. The County may also notify the property attached to this agreement via first-class mail or door hanger that a survival inspection must be scheduled with two weeks of the date on the notice. The St. Mary's County Department of Land Use and Growth Management shall complete a final inspection of the site and certify that the Owner has completed all conservation measures enumerated in the Critical Area Planting Agreement. Failure of the Owner to obtain a final survival inspection is a breach of this agreement.
16. In the event the Owner breaches the Critical Area Planting Agreement, the Owner shall forfeit any bonds. The bonds may be used by the County to restore the property, complete the required plantings, and ensure the survival of the approved plantings. If the bonds are insufficient to pay the costs of restoration, planting, or maintenance, the County shall place a lien against said property for all monies due and owing to the County. The lien shall be established and enforced by the County pursuant to the Maryland Contract Lien Act as provided for in the Real Property Article of the Annotated Code of Maryland.
17. The Owner shall indemnify, hold harmless, and defend the County, its agents, and contractors from all claims, rights, judgments, etc. resulting from injuries, including death, damages and losses sustained by any person or property arising from the Owner's negligence in the construction, planting, maintenance, or use of the required plantings.

18. The County shall have the right to enter upon the land and inspect at any time during the project or term of this agreement. The County shall further have the right to enter upon the land and restore the property with the bond deposited with the County by the Owner, should the Owner or subsequent owners fail to complete the project or maintain the plantings for the term of the agreement.
19. Owner further agrees to contact the St. Mary's County Department of Land Use and Growth Management to request the bond release after the completion of a satisfactory survival inspection.
20. It is expressly agreed by all parties that it is the purpose and intent of this agreement to ensure the installation, maintenance, and performance of conservation measures provided for by the approved plans or revisions or modifications thereof, in the designated Critical Area Program or on a specific project approved herein.
21. This Agreement and covenants contained herein shall run with the land, shall bind the property and shall be binding on the Owner, its heirs, executors, successors, and assigns, and shall bind all present and subsequent owners of the property.
22. This Agreement shall be recorded in the Land Records of St. Mary's County, Maryland. A copy of the recorded agreement shall be attached to any application for a Building Permit for any lot and parcel described above.
23. The obligations hereunder shall not be assignable to any person or entity other than an immediate grantee to, or successor in interest of, a current owner, and the obligations and the duties herein shall run with the property described herein, and shall be binding upon the subsequent owner of all or any portion of the property described herein with respect to the property acquired by them, and said owner shall be automatically deemed the "Owner" as defined hereunder and any obligation of the Owner shall mean and refer to the person who is the Owner of the property.
24. The Owner, for itself and its successors and assigns, agrees to make specific references to this agreement in a separate notice paragraph in any contract, deed, lease or other legal instrument by which any possessory or equitable interest in the property is conveyed which shall provide notice to the purchaser or lessee of the property that:
 - a. One or more CAPA plantings are located on the property.
 - b. CAPA plantings may not be readily apparent or noticeable.
 - c. CAPA plantings may not be modified, relocated, or removed from the property unless it is replaced in a manner approved by the County and without adverse impact on neighboring and adjoining properties.
 - d. The purchaser or lessee shall be responsible for expenses above and beyond any bonds deposited with the County for any required maintenance of the CAPA plantings.

The failure of the Owner to include such notice in the deed shall not affect the obligation and duties of any purchaser or lessee of all or any portion of the property as set forth herein.

25. No change or modification of, or waiver under, this agreement shall be valid unless it is in

writing and signed by authorized representative of the County. No waiver of a breach or violation of any term, covenant or condition contained in this agreement shall be deemed to be a waiver of any subsequent breach or violation of the same or any other term, covenant, or condition in this agreement.

26. This Agreement shall be construed under the laws of the State of Maryland. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law. This Agreement shall be construed as covenants applicable to the property and a violation hereof shall not be construed as causing a reversion of title.

27. The Agreement terminates upon final approval of the survival inspection by the County. Verification of a final approved planting inspection may be obtained by contacting the St. Mary's County Department of Land Use and Growth Management at (30) 475-4200 ext. 1500 and may be recorded with the deed at the expense of the owner.

a. This Critical Area Planting Agreement is consistent with the Critical Area provisions of the St. Mary's County Comprehensive Zoning Ordinance and COMAR 27.01.09 and was prepared by: Environmental Planner, **Leah Langford** on **9/20/2022**

This Agreement shall be binding on the undersigned Owner together with his/her personal representative, heirs, and assigns, and shall run with and bind the above-described Property.

IN WITNESS the hand and seal of the OWNER.

Print Name: _____ Print Name: _____

STATE OF MARYLAND COUNTY OF ST. MARY'S, to wit:

Sworn to and subscribed before me by _____ (affiant)

on this _____ day of _____, 20____.

(Notary Seal)

Signature of Notary Public: _____

Notary Public Name: _____

My Commission expires: _____

**St. Mary's County Government
Land Use & Growth Management
23150 Leonard Hall Drive
P. O. Box 653
Leonardtown, MD 20650**



CATHERINE FRANKS
HUGHES AND JOAN PHILLIP
3221 13TH ROAD S
ARLINGTON, VIRGINIA 22204-4328