

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman
Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

June 9, 2020

William Mackey
Director of Planning, Housing, and Zoning
Kent County
400 High Street
Chestertown, Maryland 21620

Re: **Kent County Critical Area Program
Amendment to Kent County Growth Allocation Policy
Resolution 2020-03**

Dear Mr. Mackey:

The purpose of this letter is to officially notify you of the Critical Area Commission's action on the above-referenced amendment to the County's Growth Allocation Policy. On June 3, 2020 the Critical Area Commission concurred with my determination that Resolution 2020-03 be reviewed as a refinement to the County's Growth Allocation Policy. I approved the refinement on the same day with the following condition:

1. The County must amend the Growth Allocation Policy Section 2.2.g and 2.2.h by reformatting and adding the additional language as described in the attachment to this letter. Language in ~~strike through~~ must be deleted and language that is **bolded and underlined** must be added.

Please note that the refinement must be reflected in the County's Growth Allocation Policy within 120 days of the date of this letter. Please provide a copy of the amended policy to the Commission staff when it is available.

Thank you for your time and efforts regarding this program update. If you have any questions or concerns, please contact this office at (410) 260-3460.

Sincerely,

A handwritten signature in black ink that reads "Charles C. Deegan".

Charles C. Deegan
Chairman, Critical Area Commission
Chesapeake and Atlantic Coastal Bays

Enclosure

Resolution 2020-03
Refinement Agreement Attachment
Kent County Growth Allocation Policy
Section 2.2.g – 2.2.j

g. New Intensely Developed Areas shall be located in ~~(1)~~ **an existing** Limited Development Areas, or ~~(2)~~ adjacent to an existing Intensely Developed Area, ~~or (3) be~~ **unless:**

i. The project is related to a tourism, heritage development, or marine use ~~that is part of a project that will expand or intensify a lawfully existing intensive use;~~

ii. Is currently served by public sewer, or will use a Best Available Technology (BAT) onsite sewage disposal system; and

iii. Is consistent with the comprehensive plan.

~~i.~~ **h.** All new IDAs shall be located:

~~a.~~ **i.** Within a planned, designated growth area that has been identified by the Comprehensive Plan; or

~~b.~~ **ii.** Within a previously developed commercial and/or industrial area with public water and sewer and other public infrastructure; or

~~c.~~ **iii.** Outside of a designated growth area, where the nature of the proposed IDA requires such location and is also part of a project that will expand or intensify a lawfully existing intensive use that existed as of April 12, 1988.

~~ii.~~ **i.** All new IDAs shall have a minimum area of at least 20 acres, unless:

~~a.~~ **i.** The proposed area is contiguous to an existing IDA or LDA, which is at least 20 acres in size; or

~~b.~~ **ii.** The proposed area contains a grandfathered commercial, industrial, institutional, or marine use that existed as of April 12, 1988.

~~h.~~ **j.** The application for growth allocation shall comply with the requirements found in Natural Resources Article 8-1808.1(c) **and COMAR 27.01.02.06 - .06-4.**

RESOLUTION 2020-03

COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

A RESOLUTION TO AMEND BY INTERLINEATION THE CRITICAL AREA GROWTH ALLOCATION POLICY FOR KENT COUNTY, MARYLAND, TO ADDRESS CERTAIN NEW CONDITIONS WHICH HAVE BEEN IDENTIFIED SINCE THE PRIOR AMENDMENT IN 2010

WHEREAS, the Board of County Commissioners of Kent County, Maryland (the Board) adopted, pursuant to the authority granted under Maryland Annotated Code, Natural Resource Article § 8 - 1808, a Growth Allocation Policy in 1998, which was amended in 2010, to comply with revised standards found in the Maryland Annotated Code, and which now must be amended to address new conditions identified in Kent County, Maryland; and,

WHEREAS, the Board finds it beneficial to the County to have criteria for locating new limited development areas and intensely developed areas; and

WHEREAS, the Kent County Planning Commission reviewed these proposed amendments and recommended favorably at its meeting on January 2, 2020; and

WHEREAS, a public hearing was held by the Board on February 18, 2020, and five members of the public signed in to speak on the matter; and

WHEREAS, the Board hereby finds that the attached, amended policy is consistent with the Kent County Comprehensive Plan and the Kent County Critical Area Program; and

WHEREAS, the Board hereby approves the attached, amended policy without the second sentence under Article II *Standards*, Section 2.2 *Growth allocation in the Unincorporated Territory of Kent County*, §h, which is noted in the attached, and that such approval was determined at its meeting on March 3, 2020.

NOW, THEREFORE, BE IT RESOLVED, that on March 3, 2020, the Board does hereby adopt the proposed policy amendment by interlineation, attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that this Resolution shall take effect upon approval by the Maryland Critical Area Commission.

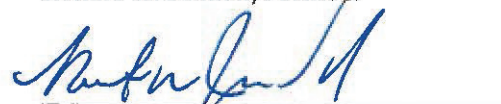
ATTEST:


Sondra M. Blackiston, Clerk

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


P. Thomas Mason, President


Ronald H. Fithian, Member


Robert N. Jacob, Jr., Member

ADOPTED: March 3, 2020

KENT COUNTY GROWTH ALLOCATION POLICY

ARTICLE I. PURPOSE AND APPLICABILITY

Section 1.1 Title and Purpose

This document shall be known as the Growth Allocation Policy for Kent County, Maryland. The purpose of this policy is to set forth the process and requirements for hearing and granting growth allocation.

It is Kent County's policy to grant growth allocation to the incorporated towns of Betterton, Chestertown, Millington, and Rock Hall upon request. Galena is not in the Critical Area Chesapeake and Atlantic Coastal Bays, but should the town of Galena annex property on the Critical Area, Galena would be eligible to receive growth allocation. Kent County may also grant growth allocation to areas outside the incorporated towns to special projects necessary to fulfill the goals and objectives as identified in the Kent County Comprehensive Plan.

ARTICLE II. STANDARDS

Section 1. Growth Allocation within the Incorporated Towns

- 1.1 Growth allocation may be granted to the incorporated towns upon application to the County Commissioners of Kent County.

Section 2. Growth allocation in the Unincorporated Territory of Kent County

- 2.1 Growth allocation may be granted to projects in the unincorporated areas of Kent County only for the development of desirable employers or quality amenities as identified in the Kent County Comprehensive Plan. These projects must have a positive impact on the County's economy and make a positive net fiscal contribution to County's budget (i.e., taxes paid by the project exceed services required by the project). The County Commissioners shall consider the compatibility of the project with the surrounding land use.
- 2.2 In order to grant growth allocation, the County Commissioners must find that the application meets all of the following:
 - a. The Kent County Comprehensive Plan identifies the proposed type of project as a means to expand and provide more diversity in the size, number, and type of businesses in Kent County or as a means to enhance and expand locally based tourism that relies upon the unique natural, cultural and historic features and qualities of Kent County.
 - b. The proposed project is suitable for the sensitive location and poses minimal risks to the environment and minimizes impacts and optimizes benefits to Habitat Protection Areas as defined in COMAR 27.01.09 and in an area and manner that improves water quality.
 - c. Site location and development will use innovative design features to minimize negative impacts on water quality, habitat protection areas, woodlands, and forests. Examples include but are not limited to the use of buffer areas to protect habitat, wildlife corridors, and other important natural areas, the use of conservation landscapes or Bayscapes, and the limitation of lot coverage through clustering and shared roadways.
 - d. The proposed project is consistent with the goals and intent of the Kent County Comprehensive Plan, Land Use Ordinance and Critical Area Program.

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e. The proposed project accomplishes two of the following standards to mitigate the negative effects caused by higher intensity development than normally allowed:

- i. The project is within a developed area such as a village.
- ii. The project has direct access to public sewer and water.
- iii. Man-made structures on the site are clustered.
- iv. Efforts are made to enhance the habitat of threatened or endangered species or species in need of protection beyond the minimum required standards.
- v. Permanent environmental easements are donated.
- vi. All remaining agricultural lands on the site are placed into a protective easement.
- vii. Public access to natural and physical amenities is provided.
- viii. The development uses infill or existing structures.
- ix. Habitat for forest interior dwelling birds and/or other sensitive species is created or expanded.
- x. The restoration, enhancement, or creation of wetlands is included in the project.
- xi. Afforestation/reforestation is provided beyond the minimum required standards.
- xii. Historic structures are restored.
- xiii. Buildings are designed to reflect the heritage of Kent County.

f. New Limited Development Areas shall be located adjacent to existing Limited Development Areas or Intensely Developed Areas unless:

- i. The project is a tourism- or heritage-related project where a location in a Resource Conservation Area is integral to the nature of the project; or
- ii. The project is marine-related and the location of which is dictated by the characteristics of the shoreline or water; or
- iii. The project is a grandfathered commercial, industrial, institutional, or marine use that existed as of April 12, 1988.

~~g. New Intensely Developed Areas shall be located in a Limited Development Area or adjacent to an existing Intensely Developed Area, and shall be:~~

- ~~i. Within growth areas as indicated in the Comprehensive Plan or in a previously developed commercial and/or industrial area with public water and sewer and other public infrastructure, unless the project is related to tourism, heritage development, or marine use and the nature of the project requires a location outside of a designated growth area.~~
- ~~ii. At least 20 acres in size unless:~~
 - ~~a. It is contiguous to an existing Intense Development or Limited Development Area of at least 20 acres in size; or~~
 - ~~b. The project is a grandfathered commercial, industrial, institutional, or marine use that existed as of April 12, 1988; or~~
 - ~~c. The project is located in a previously developed commercial and/or industrial area with public water and sewer and other public infrastructure.~~

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- g. New Intensely Developed Areas (IDAs) shall be located in (1) a Limited Development Area, or (2) adjacent to an existing Intensely Developed Area, or (3) be related to tourism, heritage development, or marine use that is part of a project that will expand or intensify a lawfully existing intensive use.
 - i. All new IDAs shall be located:
 - a. within a planned, designated growth area that has been identified by the Comprehensive Plan; or
 - b. within a previously developed commercial and/or industrial area with public water and sewer and other public infrastructure; or
 - c. outside of a designated growth area, where the nature of the proposed IDA requires such a location and is also part of a project that will expand or intensify a lawfully existing intensive use that existed as of April 12, 1988.
 - ii. All new IDAs shall have a minimum area of at least 20 acres, unless:
 - a. the proposed area is contiguous to an existing Intense Development or Limited Development Area, which is at least 20 acres in size; or
 - b. the proposed area contains a grandfathered commercial, industrial, institutional, or marine use that existed as of April 12, 1988.
- h. The application for growth allocation shall comply with the requirements found in Natural Resources Article 8-1808.1(c).
- 2.3 The Kent County Commissioners retain the right to impose any additional restrictions, conditions or limitations which are deemed necessary.
- 2.4 The Kent County Commissioners retain the right to disapprove a project even if these requirements are entirely fulfilled.

ARTICLE III. APPLICATION

PROCEDURE FOR PROJECTS IN THE UNINCORPORATED TERRITORY OF KENT COUNTY

Section 1. Application Procedure

1. An application for growth allocation in the unincorporated territory of Kent County may be initiated by resolution of the County Commissioners, motion of the Planning Commission, or petition of any property owner using forms specified by the Kent County Planning Commission.
2. Before taking any action on any proposed growth allocation ~~amendment~~ application, the County Commissioners shall submit the proposal to the Planning Commission for concept and preliminary plan review and a recommendation on growth allocation. The Planning Commission may hold a hearing on any application for growth allocation before submitting its recommendation to the County Commissioners. The Planning Commission may request any pertinent data or information as it deems necessary. In its recommendation, the Planning Commission shall address the following:
 - a. The public need for the proposal.

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- b. The extent to which the proposal complies with or deviates from the Comprehensive Plan and Critical Area Law.
3. Where a proposal may require the granting of a variance or special exception, the said variance or conditional use must be obtained before the County Commissioners take action on the growth allocation.
4. Before approving an application for growth allocation, the County Commissioners shall hold a public hearing thereon.
5. The County Commissioners shall render its decision within ninety (90) days of the hearing. The County Commissioners shall forward approved applications for growth allocation to the Critical Area Commission for the Coastal and Chesapeake Bays along with the findings and supporting documents as required by COMAR 27.01.02.06 through .06-405-1 and ~~COMAR 27.01.02.05-2~~.
6. Newly designated Intense Development Area or Limited Development Area shall be designated on the County Critical Areas Map.
7. Petitions for growth allocation denied by the County Commissioners, or one substantially similar, shall not be considered for one year after the denial.
8. Any aggrieved person with standing may within thirty (30) days after the decision, appeal to the Circuit Court of Maryland.
9. Applications for growth allocation shall not be effective until approved under Natural Resources Article 8-1809, as the same may be amended from time to time.
10. If no substantial construction has taken place in accordance with the plans for which such growth allocation was granted, then the growth allocation shall expire after three years unless otherwise extended by the County Commissioners of Kent County.

Section 2. Application Requirements

1. The application for growth allocation shall, at a minimum:
 - a. Specify the map and parcels receiving growth allocation.
 - b. The current and proposed use of the parcels.
 - c. The current and proposed zoning classifications.
 - d. The current and proposed Critical Area Designation.
 - e. The reason requesting growth allocation.
 - f. Renderings of all primary buildings and each type of accessory buildings.
 - g. A preliminary plan which identifies existing and proposed features including but not limited to: the proposed layout of buildings, parking, open space, driveways and roads, 100-year floodplains, watercourses, buffers, wetlands (tidal and non- tidal), slopes in excess of 15%, forest and woodland areas, scenic or historic structures or areas, existing buildings, existing easements, zoning and critical area boundaries and habitat protection area.
 - h. Site statistics including but not limited to: gross area of the project, growth allocation requested and purpose of growth allocation, area of each proposed use, area in each zoning and critical area classification, and forested areas.
2. The application for growth allocation shall comply with the standards for submittals to the Critical Area Commission for the Coastal and Chesapeake Bays as found in Natural Resources Article 8-J 808.1(c) and COMAR 27.01.02.06 through .06-4.