



County Commissioners Hearing Room
400 High Street
Chestertown, Maryland

AGENDA
June 2, 2022
1:30 p.m.

Members of the public are welcome to attend meetings in person or via conference call. Please note that the County’s live stream video is temporarily unavailable.

Public participation and audio-only call-in number:

- 1. Dial **1-872-239-8359**
- 2. Enter Conference ID: **232 671 105#**

Members of the public are asked to mute their phones/devices, until the Commission Chair opens the floor for comment.

MINUTES
May 5, 2022

PUBLIC HEARING

22-31 Zoning Text Amendment Rec to CCs
Solar Energy System, utility scale special exception on farms in AZD and RCD
Clarification of language

APPLICATIONS FOR REVIEW

Brent Nelson, Map 31, Parcel 5 – Comprehensive Water and Sewerage Plan Amendment Rec to CCs

GENERAL DISCUSSION

Draft 2022 Land Preservation, Parks and Recreation Plan Rec to CCs

STAFF REPORTS

ADJOURN

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Planning Commission meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

All applications will be given the time necessary to assure full public participation and a fair and complete review of all projects. Agenda items are subject to change due to cancellations.



DRAFT

Planning Commission
Department of Planning, Housing, and Zoning

MINUTES

May 5, 2022

1:30 p.m.

The Kent County Planning Commission met in regular session on Thursday, May 5, 2022, at 1:30 p.m. in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. It was a hybrid meeting, and the following members were in attendance: Chair F. Joseph Hickman, Vice Chair Paul Ruge, County Commissioner President P. Thomas Mason, William Sutton, and Ray Strong. Cynthia L. McCann, Esq., Planning Commission Attorney was in attendance. Staff in attendance were William Mackey, AICP, Director; Carla Gerber, AICP, Deputy Director; and Mark Carper, Associate Planner.

Chair Hickman called the meeting to order at 1:30 p.m.

MINUTES

Mr. William Sutton moved to accept the minutes of April 7, 2022, as distributed. Mr. Ray Strong seconded the motion. The motion passed with all in favor.

PUBLIC HEARING

#22-23 Steven Green – Zoning Text Amendment

To add "septic tank maintenance and excavation" as a special exception to the Village district

Cynthia McCann, Esq., read the public notice published in the Kent County News on April 28, 2022. Ms. Carla Gerber presented the staff report.

Vice Chair Ruge inquired about the rationale for the application and expressed concern that there are small lots in the Village District and this use would involve large equipment. Fencing in the Village District is also limited to eight feet in height, which would be inadequate to screen trucks. Mr. Ruge also encouraged the Planning Commission to possibly refer the application to the Comprehensive Rezoning Update Task Force.

Ms. Gerber stated the applicant is looking to relocate to a property zoned Village, noting that the use was proposed as a special exception with specific conditions.

Chair Hickman and President Mason noted that the conditions and location of any such uses would be reviewed by the Board of Appeals. The Planning Commission would review any applications to recommend to the Board of Appeals. Site plans at the concept, preliminary, and final stages would also be reviewed by the Planning Commission.

Mr. Sutton asked if there were any complaints about flies or odor at the current locations of such uses. Staff responded that there were no known complaints. The Planning Commission had questions for the applicant and asked staff to reach out to see about his availability.

Mr. Sutton moved to table the item to the end of the meeting. Mr. Strong seconded. The motion passed 4-0.

APPLICATIONS FOR REVIEW

#22-20 Hall Properties, LLC – Variances (Side Yard Setback and Lot Size) 28036 Creamery Street, Kennedyville – Second Election District – Village (V)

Ms. Gerber presented the staff report. The Chair swore in Mr. Michael Scott, PLS, representing the applicant.

Mr. Scott noted that the property was originally subdivided in the 1800's. When surveying the property, it was discovered that the house was built over the property line. The applicant is requesting three-foot setbacks for the existing building.

Vice Chair Ruge asked why the requested property line was returned to the original corner marker, suggesting that the property line come straight out to the street. Mr. Ruge also asked about the variance figure being requested. Mr. Ruge also raised concern over access to the property by emergency vehicles, and the possibility of fencing.

Ms. Gerber noted the variance was only needed for the lot that was being decreased in size, since this would increase the nonconformity, while the other lot was being increased in size, thus decreasing nonconformity.

Mr. Scott responded that the application was based on the applicant's request for the proposed configuration.

Mr. Strong moved for approval based on the information in the packet that the application meets all criteria, that this is a reasonable request, that this allows for reasonable use of the property, and that it include the staff recommendation that the variance granted will expire if a lot line adjustment is not recorded in one year. Vice Chair Ruge seconded. The motion passed 4-0.

#22-22 Marci Tarrant Johnson – Variance (Pier Length) 22059 Harrington Park Road – Fifth Election District – Critical Area Residential (CAR)

Mr. Mark Carper presented the staff report. Chair Hickman swore in Ms. Johnson who attended remotely.

Vice Chair Ruge asked if what is being proposed is strictly replacement of what is existing. This was confirmed.

Chair Hickman asked if the channel is located via the same manner by both the State MDE and Kent County.

Ms. Gerber noted they are the same; however, the County measures the width of the waterway differently.

Mr. Sutton noted that the main aspect that he reviews for is the 25% of the width of the waterway for safety.

Vice Chair Ruge moved to send a favorable recommendation to the Board of Appeals, based on the fact that this appears to be a safety concern, that the variance will not cause a substantial detriment to adjacent or neighboring property, that the variance will not change the character of the neighborhood or the district, that the variance is consistent with the Comprehensive Plan and the general intent of the Land Use Ordinance, and that the practical difficulty is the pier has been in this location for 70 years and the water is very shallow now (bathometric and topographic difficulty). Mr. Strong seconded. The motion passed 4-0.

#22-17 William & Valerie Ashmore – Site Plan

**Private Destination/Residence Club, Southeast corner of the intersection of
Skinners Neck Road and Kelley’s Park Road – Fifth Election District – Marine (M)**

Ms. Gerber presented the staff report. Chair Hickman swore in Mr. Bill Ashmore and Kevin Shearon, P.E.

Mr. Shearon reported that the citizen participation meeting was held via the County’s conference call bridge line. There were four members of the public who attended.

Mr. Sutton asked if the sewer line would be extended. Mr. Sutton noted that the project would be on well water.

Mr. Shearon responded that a new grinder pump would be utilized and connected to the existing sewer line.

Vice Chair Ruge asked about the utility pole located in the proposed parking lot and the existence of wetlands.

Mr. Ashmore responded that the pole would either be relocated or undergrounded. Mr. Shearon responded that there are no wetlands present; however, the ground under the building will be raised to be out of the floodplain. Mr. Shearon explained that there would also be parking located under the building with two exterior garage doors.

Mr. Ashmore and Mr. Shearon mentioned the pending agreement related to boat slips in response to inquiry by the Planning Commission. Mr. Mackey noted that the agreement had not received final legal review.

Chair Hickman noted that the project would be connected to the sewer, which would be supportive to the system.

Mr. Strong moved for preliminary approval with the following conditions: submission of all required sureties for stormwater management, sediment and erosion control, and landscaping; submission of renderings and elevations; submission of sign details, if proposed; approval by the County Attorney of the agreement regarding boat slips for the residence club; that the project follows the Comprehensive Plan; that the project is served by public sewer and private well; that the applicant has been working with Public Works on the grinder pump; and conceptual SWM and SEC plans have been submitted for review. Mr. Ruge seconded. The motion passed 4-0.

PUBLIC HEARING - CONTINUED

#22-23 Steven Green – Zoning Text Amendment

To add “septic tank maintenance and excavation” as a special exception to the Village district

Mr. Steve Green was present to answer questions, and he discussed his plans for screening and indoor storage.

Vice Chair Ruge asked about the implications of adding the use to the Village district Countywide. A discussion ensued regarding the location of the applicant’s current business and the proposed site for his business expansion that is located in the Village zoning district. The special exception would require a case-by-case review for the use. The Planning Commission members expressed support for allowing local small business to expand appropriately.

Ms. McCann recommended an amendment to add “and excavation” to the use “Home and business services such as grounds care, janitorial, exterminators, landscaping, and other repair and maintenance services, but not septic tank maintenance **and excavation**, subject to site plan review” in Article V, Section 7.2 #27, Section 8.2 #10 and Section 9.2 #13 to correspond with the proposed use of this zoning text amendment currently under review.



TO: Kent County Planning Commission
FROM: Bill Mackey, AICP, Director
MEETING: Thursday, June 2, 2022
SUBJECT: *Solar Energy System, utility scale* special exception on farms in AZD and RCD
Clarification of language

Executive Summary

Request

Per the request of the Board of Appeals, the Department of Planning, Housing, and Zoning is presenting a proposed amendment to clarify language that the Board of Appeals found unclear while reviewing a recent special exception for a *Solar Energy System, utility scale*. The Board of Appeals denied the request, suggesting that the Department of Planning, Housing, and Zoning put forward a zoning text amendment.

Process

Per Article XII. *Administrative Procedures*, Section 6. *Amendments*, §1 of the Land Use Ordinance, “the County Commissioners may amend, supplement, or change the boundaries of the districts or the regulations of this Ordinance. Any amendment 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 Planning Commission.” In this case, the Board of Appeals requested that staff prepare a zoning text amendment (ZTA) to clarify the language related to the aforementioned solar arrays. Staff prepared such an amendment and presented it to the Agriculture Advisory Commission per Chapter 172.

Per Chapter 172 of the Code of Public Laws, the Agriculture Advisory Commission met to review the proposed legislation in order to provide advice to the Planning Commission and to the Board of County Commissioners, since the proposal is related to AZD and would therefore affect agriculture in Kent County. Staff also informally presented the proposed ZTA for feedback to the Board of Appeals. The AAC suggested language different from the staff-proposed language, and the Board of Appeals informally opined with its agreement to a part of the AAC’s recommendation. Upon review, staff added additional language to clarify sub-section k. as it related to sub-section j. The revised language is presented to the Planning Commission in the form of a zoning text amendment for its consideration and for a motion to proceed with the process.

Overview

Staff proposes the following amendment to the LUO to clarify the area of use and property adjacency:

- j. The area of use ~~use~~ **SOLAR PANEL ARRAYS** may not exceed 5 acres ~~onsite~~. **THE AREA OF THE SOLAR PANEL ARRAYS SHALL BE MEASURED TO INCLUDE THE AREA WITHIN THE SOLAR PANEL ARRAYS’ SECURITY FENCE.** Adjacent properties shall not aggregate solar collection panels **BY ERECTING SOLAR PANEL ARRAYS IN CLOSE PROXIMITY TO EACH OTHER** to achieve an area exceeding 5 acres.
- k. In AZD, **ONLY the FIVE-ACRE MAXIMUM area OF SOLAR PANEL ARRAYS, AS MEASURED IN SUB-SECTION J.,** ~~developed by a utility-scale solar energy system~~ is considered *development* and counted toward the maximum percentage of the property in lots.

Recommendation

Staff requests a motion to proceed as well as a favorable recommendation to the County Commissioners.

PRELIMINARY STAFF REPORT

TO: Kent County Planning Commission

SUBJECT: *Solar Energy System, utility scale* special exception on farms in AZD and RCD
Clarification of language

Zoning Text Amendment – AN ACT to amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance (LUO), Article VII, *Special Exceptions*, Section 7, *Special Exceptions*, §57.25, *Solar energy systems, utility scale*, on farms in the AZD and RCD, sub-section j and sub-section k., in order to clarify language that relates to the area of use for permitted solar arrays and the limitations set forth for adjacent properties under sub-section j., and to clarify the area developed under sub-section k.

DATE: May 27, 2022

DESCRIPTION OF PROPOSAL

Per the request of the Board of Appeals, the Department of Planning, Housing, and Zoning is presenting a proposed zoning text amendment to clarify language the Board of Appeals found unclear while reviewing a recent special exception for a *Solar Energy System, utility scale*. The Board of Appeals denied the request, suggesting that the Department of Planning, Housing, and Zoning put forward a zoning text amendment (ZTA). The ZTA addresses Article VII, Section 7, §57.25, sub-section j. and sub-section k. (LUO, p. 428).

On April 18, 2022, the Board of Appeals held a public hearing and reviewed a special exception for a *Solar Energy System, utility scale*, proposed at 26001 Still Pond Neck Road. During the review, the Board of Appeals opined that the undefined term “area of use” found in Section 7, §57.25 j. of the special exception provisions could be considered to include all required elements of a Solar Energy System, which the Board further opined as the solar array and equipment, perimeter landscaping, setback areas to the fencing, and access roadways. A copy of the signed decision by the Board of Appeals is attached for reference. In order to clarify the meaning of the term “area of use,” the Board suggested that staff draft a ZTA to address it. Staff drafted language and prepared to present it to the Agriculture Advisory Commission for its review.

On May 7, 2022, the Department of Planning, Housing, and Zoning posted and distributed the staff report to the Agriculture Advisory Commission (AAC) for its meeting on May 11. The staff report suggested the following for sub-section j.: “The area of use **of any Solar Energy System, utility scale** may not exceed 5 acres onsite. Adjacent properties shall not aggregate solar collection panels **by erecting solar panels in close proximity to each** other to achieve an area exceeding 5 acres,” relying on a defined term in the LUO.

Prior to the AAC meeting, Anthony Kupersmith, Esq., legal representative of the solar array applicant, SGC Power, submitted a letter, dated April 29, 2022, with suggestions that are much more specific and detailed to address the comments made by the Board of Appeals: “The area of use may not exceed 5 acres onsite. **‘Area of use’ means the area within the solar array’s security fence or approved barrier and does not include landscape buffers, access roads, or utility-required improvements occurring outside of the fenced or barriered area.** Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.” The letter was provided to the AAC, and it is attached for your information.

On May 11, 2022, the AAC met and reviewed the proposed language by staff and the letter submitted as part of the public process, sending a favorable recommendation to the Planning Commission and County Commissioners to clarify the language, suggesting the following: “The area of use may not exceed 5 acres

onsite. **Area of use means the area within the solar array's security fence or approved barrier.** Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres." The AAC noted the 10% rule applies per sub-section k., and following the meeting staff made a note to address it.

On May 18, 2022, the Board of Appeals met on another matter and discussed the proposed ZTA informally under its General Discussion item on the agenda. The Board was in favor of language that explicitly limits the area of use to those components of the energy system that are within the boundaries of the required perimeter security fence, which would not exceed 5 acres. The Board also suggested removal of the term "onsite" from sub-section j. and removal of "or approved barrier" from the AAC recommended text. The Board further suggested that "solar panel arrays" be substituted for "area of use" and that the remainder of the text be revised by staff to reflect the substitution of "solar panel arrays" for the term "area of use."

Following the Board of Appeals meeting and in preparation for submittal to the Planning Commission, it was identified by staff that the term *development* in sub-section k. needed to be related to sub-section j. Staff therefore presents the following revised language for consideration by the Planning Commission:

- j. The area of use ~~solar panel arrays~~ may not exceed 5 acres onsite. **The area of the solar panel arrays shall be measured to include the area within the solar panel arrays' security fence.** Adjacent properties shall not aggregate solar collection panels **by erecting solar panel arrays in close proximity to each other** to achieve an area exceeding 5 acres.
- k. In AZD, **only the five-acre maximum area of solar panel arrays, as measured in sub-section j.,** ~~developed by a utility-scale solar energy system~~ is considered *development* and counted toward the maximum percentage of the property in lots.

APPLICABLE LAW

Per Article XII. *Administrative Procedures*, Section 6. *Amendments*, §1 of the Land Use Ordinance:

1. The County Commissioners may amend, supplement, or change the boundaries of the districts or the regulations of this Ordinance. Any amendment 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 Planning Commission.
2. The application for an amendment to the text of this Ordinance shall, at a minimum, state in particular the article, section, and paragraph sought to be amended. The application shall contain the language of the proposed amendment and shall recite the reasons for such proposed change in text.
3. The application for an amendment to the map of this Ordinance shall, at a minimum, specify the map and parcels sought to be amended, the current and proposed zoning classification, and recite the reasons for the proposed amendment.
4. Before taking any action on any proposed amendment, supplement, or change, the County Commissioners shall submit the proposal to the Planning Commission for review and recommendation. The Planning Commission may hold a hearing on any proposed amendment, supplement, or change before submitting its recommendation to the County Commissioners. The Planning Commission may request any pertinent data and information as it deems necessary. In its recommendation, the Planning Commission shall address:
 - a. The public need for the proposed amendment; and

- b. The extent to which the proposed amendment complies with or deviates from the Comprehensive Plan and the Critical Area Law.
- c. When reviewing an amendment to the zoning map, the Planning Commission shall address the suitability of the property in question for the uses permitted under the proposed zoning. The Planning Commission shall not recommend the adoption of the amendment unless it finds that the adoption of the amendment is in the public interest and not solely for the interest of the applicant. Failure of the Planning Commission to report to the County Commissioners within 60 days following its first meeting after the proposal was referred to them shall be deemed approval.

COMPREHENSIVE PLAN

The proposed text amendment is consistent with the Kent County Comprehensive Plan.

Strategy: Identify and zone locations suitable for larger/utility scale renewable resource facilities.

Continue to include provisions in the Land Use Ordinance which provide suitable locations for large scale renewable energy facilities. Such areas will be located to not unduly impinge on the County's rural character nor its productive agricultural lands (p. 88).

STAFF COMMENT

As the purpose of amending the text would be to clarify existing language, there should be no effect on agricultural uses or properties. The currently permitted use would remain the same and be better defined.

When the Planning Commission reviews the item, the Planning Commission will need to consider the public need for the amendment and consistency with the Comprehensive Plan and Land Use Ordinance.

The public need for the amendment is to provide clarification for the Board of Appeals and the public, so applications are able to be approved via the special exception provisions that were adopted for the use.

RECOMMENDATION

Staff recommends sending a favorable recommendation to the County Commissioners to amend the text in order to clarify the text for special exceptions to permit Solar Energy System, utility scale.

Attachments

- Letter from Anthony Kupersmith, Esq., dated May 27, 2022
- Proposed zoning text amendment prepared by DPHZ staff
- Letter from the AAC related to its meeting on May 11, 2022
- Letter from Anthony Kupersmith, Esq., dated April 29, 2022
- Decision by the Board of Appeals, dated April 28, 2022



MCALLISTER
DETAR
SHOWALTER
& WALKER

Anthony Kupersmith
akupersmith@mdswlaw.com
(410) 934-3910 Direct

May 27, 2022

VIA EMAIL DELIVERY to wmackey@kentgov.org

Kent County Planning Commission
c/o William Mackey
Director of Planning, Housing, and Zoning
R. Clayton Mitchell, Jr. Kent County Government Center
400 High Street
Chestertown, Maryland 21620

**Re: Zoning Text Amendment to Clarify “Area of Use” for Utility Scale Solar Projects
in the AZD District**

Dear Members of the Planning Commission:

This is to provide comments on behalf of 25809a Still Pond Neck, LLC (a subsidiary of SGC Power of Elkridge, Maryland, hereinafter “SGC”) in support of the above-mentioned zoning text amendment (“ZTA”). SGC desires to construct a community solar facility in the County’s AZD District that will be compliant with the Kent County Code. As explained further below, SGC supports the ZTA and hopes that the Planning Commission will consider these comments as part of providing a recommendation to the County Commissioners.

I. The Proposed ZTA

The ZTA has been proposed by the Kent County Planning, Housing, and Zoning staff in order to clarify the meaning of “area of use” as the phrase appears in the County’s solar regulations:

57.25 Solar energy systems, utility scale, on farms in the AZD and RCD provided:

...

- j. The **area of use** may not exceed 5 acres onsite. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

...

See Kent County Code, Article VI, Section 11 57.25(j) (emphasis added). “Area of use” is not a defined term in the Code and therefore is subject to interpretation. The Kent County Planning, Housing, and Zoning staff and SGC had previously interpreted the phrase “area of use” as being



limited to the area onsite occupied by solar panels. SGC designed its proposed community solar project and submitted for site plan and special exception approvals based on this interpretation. However, the Board of Appeals interpreted “area of use” differently to mean not only the panels, but also every other element conceivably related to the project, including the 60’ landscape buffer surrounding the project outside of the security fence. Under the Board’s interpretation, the area available for panels would be substantially reduced (to approximately 2.5 acres or below), rendering SGC’s project (and likely any other similar community solar project) economically unfeasible. This outcome does not appear consistent with the original intent and purpose of the 5-acre maximum area of use for utility scale solar in the AZD given that the 5-acre limit was adopted well before the robust landscaping requirements were adopted. The Chairman of the Board and the Board’s Counsel commented that the phrase “area of use” is ambiguous and should be clarified through a ZTA. This led the Kent County Planning, Housing, and Zoning staff to initiate the pending ZTA application.

II. AAC and Board of Appeals Review of Proposed ZTA

On May 11, 2022, the Kent County Agricultural Advisory Commission (“AAC”) considered the proposed ZTA and recommended that the 5-acre “area of use” should be clarified to mean the area inside the security fence. Specifically, the AAC unanimously recommended the following language (new language shown in underline):

The area of use may not exceed 5 acres onsite. Area of use means the area within the solar array security fence or approved barrier. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

On May 16, 2022, the Kent County Board of Appeals considered the proposed ZTA and recommended the AAC’s language with one minor change: the elimination of the phrase “approved barrier”. The Board of Appeals’ proposed language would read as follows:

The area of use may not exceed 5 acres onsite. Area of use means the area within the solar array security fence. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

The Board of Appeals wanted to keep the new language as streamlined and clear as possible. The consensus of the Board appeared to be that a solar project could configure solar arrays, internal access roads, and equipment however it saw fit provided that the area enclosed by the security fence did not exceed 5 acres.

III. SGC’s Suggestion for Further Clarification

While SGC prefers the original interpretation of “area of use” as the panels only, which the Kent County Planning, Housing, and Zoning staff had previously adopted (and which is a clear, easily applied standard), SGC acknowledges that “area of use” may be best defined as the area within the security fence as opposed to the panels only, provided it is clear that the 5 acres do not include the landscape buffer (which alone can occupy up to 3 acres) or other elements occurring outside



the fence. SGC believes the language recommended by the AAC and Board of Appeals could be further clarified to expressly exclude landscape buffers and other features typically occurring outside of the security fence.¹ For instance:

The area of use may not exceed 5 acres onsite. Area of use means the area within the solar array security fence and does not include landscape buffers, external access roads, or utility-required improvements occurring outside of the fenced area. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

The reason for the additional language is to make sure that there is no confusion about which project elements are not included within the 5-acre “area of use.”

SGC hopes that the Planning Commission will consider expressly excluding landscape buffers and the other elements from the definition of “area of use” for purposes of clarity. However, if the Planning Commission instead prefers the paired down version of the ZTA proposed by AAC and the Board of Appeals, SGC still believes that the Code should be read as excluding the landscaping from the “area of use” based on existing language in the Countywide Standards for Utility-Scale Solar Energy Systems that requires the landscape buffer *to be outside* the security fence:

Solar arrays shall be constructed and maintained according to the following:

. . .

6. The solar array shall be enclosed by a fence or other appropriate barrier **at the interior edge of the required landscape buffer** or immediately adjacent to the solar array. . . .

See Kent County Code, Article VI, Section 11 B(6) (emphasis added). Read in conjunction with “area of use” in the proposed ZTA, this should mean that the landscape buffer is excluded from the 5-acre area of use because the fence is required to be inside (“at the interior edge of”) of the required landscape buffer. Thus, if the AAC- and Board of Appeals-recommended ZTA language is ultimately adopted, SGC’s expectation would be that the landscape buffer will be excluded from the 5-acre “area of use” based on the forementioned Code interpretation.

IV. Planning Commission’s Review and Recommendation of ZTA

The Kent County Code states that before taking any action on any proposed amendment to the County Zoning Ordinance, the amendment shall be submitted to the Planning Commission for review and recommendation. *See Kent County Code, Article XII, Section 6(4).* In its recommendation, the Planning Commission shall address certain factors, which SGC has addressed below:

¹ The AAC and Board of Appeals both considered language that would expressly exclude the landscape buffer and other elements outside the fence from the 5-acre “area of use” but decided not to include such language. It appears the reason for this was a belief that the paired down language would be clearer and easier to apply.



- a. The public need for the proposed amendment – Kent County Code, Article XII Section 6(4)(a).

The public need for the proposed amendment is demonstrated by the general consensus of the Chair of the Kent County Board of Appeals and its counsel that the phrase “area of use” is ambiguous and requires clarification, as well as by the recommendations from the Kent County Planning, Housing, and Zoning staff, the Agricultural Advisory Commission, and the Board of Appeals for new language clarifying “area of use.” Furthermore, in order to effectively implement the County’s longstanding policy of allowing limited solar activity in the AZD District, the Code should be sufficiently clear so that solar project applicants, County staff, and County Boards and Commissions can efficiently review and process project proposals.

- b. The extent to which the proposed amendment complies with or deviates from the *Comprehensive Plan* and *Critical Area Law* – Kent County Code, Article XII Section 6(4)(b).

The proposed amendment to clarify “area of use” is consistent with the Kent County Comprehensive Plan. As noted in the Preliminary Staff Report prepared by the Kent County Planning, Housing, and Zoning staff for the Agricultural Advisory Commission, the proposed ZTA is consistent with the following Comprehensive Plan’s policies:

Strategy: Identify and zone locations suitable for larger/utility scale renewable resource facilities.

Continue to include provisions in the Land Use Ordinance which provide suitable locations for large scale renewable energy facilities. Such areas will be located to not unduly impinge on the County’s rural character nor its productive agricultural lands.

(Page 88 of the Kent County Comprehensive Plan, April 2018).

The proposed ZTA helps to clarify that the Code’s 5-acre limitation on utility scale solar arrays in the AZD. The ZTA is also consistent with how the County has previously applied “area of use” in the AZD, such as in the Jones Farm case from 2012. Since “area of use” has long been understood to consist of at least the area inside the fence, the adoption of a ZTA confirming this meaning would not unduly impinge or be considered an expansion of solar in agricultural zoned areas.

SGC’s proposed project site is not located within the Critical Area. To the extent the County’s AZD solar regulations might apply within the Critical Area, the County Code has long included the phrase “area of use” and the proposed ZTA is



not inconsistent with the Critical Area Commission's regulations on renewable energy generating systems.

V. Conclusion

SGC respectfully requests that the Planning Commission recommend that the County Commissioners adopt the proposed ZTA in a form that clarifies that the 5-acre "area of use" means the area inside the security fence, excluding landscape buffers and other features occurring outside of the fence. The proposed ZTA has the support of the Kent County Planning, Housing, and Zoning staff, the Agricultural Advisory Commission, and the Board of Appeals. The ZTA does not represent an expansion of solar in the AZD; rather, it is simply a clarification of how the 5-acre limit should continue to be applied.

Thank you for considering our comments on the proposed ZTA and for your continued attention to this matter. We look forward to further engaging in the ZTA process and would be happy to provide additional information and feedback as needed.

Very truly yours,

A handwritten signature in black ink, appearing to read "AK", with a long horizontal line extending to the right.

Anthony P. Kupersmith

cc: Bill Mackey, Director of Planning, Housing, and Zoning
Carla Gerber, Deputy Director of Planning, Housing, and Zoning
Cory McCandless, SGC Power
Connor Gonzalez, SGC Power

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

_____, 2022
Legislative Session Day

Legislative Session Day
_____, 2022

**CODE HOME RULE
BILL NO. X-2022**

INTRODUCED BY: P. Thomas Mason, President of the Board of County Commissioners for Kent County, Maryland.

AN ACT to amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance (LUO), Article VII, *Special Exceptions*, Section 7, *Special Exceptions*, §57.25, Solar energy systems, utility scale, on farms in the AZD and RCD, sub-section j and sub-section k., in order to clarify language that relates to the area of use for permitted solar arrays and the limitations set forth for adjacent properties under sub-section j., and to clarify the area developed under sub-section k.

THE COUNTY COMMISSIONERS OF KENT COUNTY

P. Thomas Mason, President

INTRODUCED, read first time, _____, 2022, ordered posted and public hearing scheduled _____, 2022, at 6:00 p.m. in the County Commissioners Hearing Room, R. Clayton Mitchell, Jr., Kent County Government Center, 400 High Street, Chestertown, Maryland.

By order of:

Sondra M. Blackiston, Clerk

PUBLIC HEARING HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on _____, 2022. Reported favorably [without] amendments; read a second time and ordered to be considered on _____, 2022, a legislative session day.

**A BILL ENTITLED CHR X-2022
CLARIFICATION OF FIVE-ACRE LIMITATION FOR CERTAIN SOLAR ARRAYS**

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that the Kent County Land Use Ordinance is hereby amended as follows:

ARTICLE VII.

SPECIAL EXCEPTIONS

...

SECTION 7. SPECIAL EXCEPTIONS

Buildings, structures, and uses for which special exceptions may be authorized and the additional standards relative thereto are as follows:

1. Accessory storage *structures* with a *floor area* of more than 1,200 square feet or a height that exceed 17 feet on parcels less than 5 acres in AZD, RCD, RC, RR, CAR, and CR.

...

57.25 *Solar energy systems, utility scale, on farms in AZD and RCD provided:*

- a. A solar collection device or combination of devices are designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
- b. Screening, capable of providing year-round screening, is provided along all sides that do not collect energy.
- c. Roof mounted solar collection devices shall not extend more than 10 feet from the top of the roof. The total height of the *building*, including the solar collection devices, shall comply with the height regulations established for each zoning district.
- d. Solar collection devices shall not exceed 38 feet in height.
- e. The solar collection system shall be incidental to the use of the farm.
- f. Installation of the solar collection system shall not adversely impact adjacent properties.
- g. All *structures* associated with the solar collection system shall be neither visually intrusive nor inappropriate to their setting.
- h. All solar collection devices shall register with the Department of Emergency Services and shall submit a map noting the location of the solar collection devices and the panel disconnect.
- i. Other than wire size, there shall be no alteration of utility infrastructure to accommodate the system.
- j. The area of ~~use~~ **SOLAR PANEL ARRAYS** may not exceed 5 acres ~~onsite~~. **THE AREA OF THE SOLAR PANEL ARRAYS SHALL BE MEASURED TO INCLUDE THE AREA WITHIN THE SOLAR PANEL ARRAYS' SECURITY FENCE.** Adjacent properties shall not aggregate solar collection panels **BY ERECTING SOLAR PANEL**

ARRAYS IN CLOSE PROXIMITY TO EACH OTHER to achieve an area exceeding 5 acres.

- k. In AZD, **ONLY the FIVE-ACRE MAXIMUM area OF SOLAR PANEL ARRAYS, AS MEASURED IN SUBSECTION J.,** ~~developed by a utility scale solar energy system~~ is considered *development* and counted toward the maximum percentage of the property in lots.
- l. Tree removal shall be minimized, and any removal shall be mitigated in accordance with the Critical Area Program requirements.
- m. The applicant shall demonstrate that a utility scale solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Site Survey, an historic district, or the Chesapeake Bay and its tributaries

57.5 *Solar energy systems, utility scale*, in CC, C, and CCA provided:

- a. A solar collection device or combination of devices are designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
- b. Screening, capable of providing year-round screening, is provided along all sides that do not collect energy.
- c. Roof mounted solar collection devices shall not extend more than 10 feet from the top of the roof. The total height of the *building*, including the solar collection devices, shall comply with the height regulations established for each zoning district.
- d. Solar collection devices shall not exceed 45 feet in height
- e. All solar collection devices shall register with the Department of Emergency Services and shall submit a map noting the location of the solar collection devices and the panel disconnect.
- f. The applicant shall demonstrate that a utility scale solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Site Survey, an historic district, or the Chesapeake Bay and its tributaries.

...

BE IT FURTHER ENACTED by the County Commissioners of Kent County that this Act shall take effect on the ____ day of _____.

Read Third Time _____

PASSED this ____ day of _____

Failed of Passage _____

By order of:

Sondra M. Blackiston, Clerk

THE COUNTY COMMISSIONERS OF KENT COUNTY

P. Thomas Mason, President

Ronald H. Fithian, Member

Robert N. Jacob, Jr., Member

ORDERED a fair summary thereof of the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four-week period.

BILL NO. X-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

~~Strike through~~ indicates matter deleted from existing law.



Agriculture Advisory Commission
Department of Planning, Housing, and Zoning

May 23, 2022

Joe Hickman, Chair
Kent County Planning Commission
400 High Street
Chestertown, MD 21620

RE: Zoning Text Amendment to amend Article VII, *Special Exceptions*, Section 7, *Special Exceptions*, §57.25, *Solar energy systems, utility scale*, on farms in AZD and RCD, sub-section j.

Dear Mr. Hickman:

The Kent County Agriculture Advisory Commission has reviewed the proposed amendment to the *Kent County Land Use Ordinance*, Article VII, *Special Exceptions*, Section 7, *Special Exceptions*, §57.25, *Solar energy systems, utility scale*, on farms in AZD and RCD, sub-section j., in order to clarify language that relates to the area of permitted solar arrays and referred to as “area of use” and to clarify the limitations set forth for adjacent properties. The members found that there is a need to clarify the language and voted to recommend the following:

“The area of use may not exceed 5 acres onsite. **Area of use means the area within the solar array’s security fence or approved barrier.** Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.”

If you have any questions or concerns in this regard, kindly contact our staff in the Department of Planning, Housing, and Zoning.

Sincerely,

/s/ Jennifer Debnam

Jennifer Debnam
Chair



MCALLISTER
DETAR
SHOWALTER
& WALKER

Anthony Kupersmith
akupersmith@mdswlaw.com
(410) 934-3910 Direct

April 29, 2022

VIA EMAIL DELIVERY to wmackey@kentgov.org

William Mackey
Director of Planning, Housing, and Zoning
R. Clayton Mitchell, Jr. Kent County Government Center
400 High Street
Chestertown, Maryland 21620

**Re: Zoning Text Amendment to Clarify “Area of Use” for Utility Scale Solar Projects
in the AZD District**

Dear Mr. Mackey:

This is to provide comments on behalf of 25809a Still Pond Neck, LLC in support of the above-mentioned zoning text amendment (“ZTA”). The prospect of such a text amendment was discussed at the Board of Zoning Appeals’ (“BZA”) public hearing on 25809a Still Pond Neck, LLC’s application for a special exception for a community solar project (the “Still Pond Project”) on April 18, 2022. We understand that your office is in the process of drafting a ZTA to clarify “area of use” and are grateful for the opportunity to comment.

The Kent County Code currently requires that the “area of use” for utility scale solar projects on farms in the AZD and RCD Districts be limited to five acres in size:

57.25 Solar energy systems, utility scale, on farms in the AZD and RCD provided:

...

- j. The area of use may not exceed 5 acres onsite. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

...

See Kent County Code, Article VI, Section 11 57.25(j). Although the 25809a Still Pond Neck, LLC team and Kent County Planning, Housing, and Zoning staff (“Staff”) interpreted “area of use” to mean the panels themselves, the BZA determined that the phrase “area of use” was ambiguous and could be read to encompass not only the panels but also the entire area inside the security fence as well as the required 60’ landscape buffer outside of the fence. If the BZA’s interpretation were to stand, this would significantly reduce the generating capacity of the Still Pond Solar Project, likely rendering it and other similar community projects economically



unfeasible. The Chair of the BZA, Dr. Townshend, and the Board's attorney, Chris Drummond, indicated that a ZTA would be an appropriate means of clarifying the phrase "area of use".

We continue to believe that Staff's original interpretation of "area of use" as encompassing the panel array is correct but understand that "area of use" may be best clarified by the ZTA as the entire area inside of the security fence. If the ZTA will indeed be limited to area inside the security fence, we respectfully request that Staff consider expressly excluding the landscape buffer and other improvements outside the fence from the definition of "area of use". For example:

- j. The area of use may not exceed 5 acres onsite. "Area of use" means the area within the solar array's security fence or approved barrier and does not include landscape buffers, access roads, or utility-required improvements occurring outside of the fenced or barriered area. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.

We believe that the legislative history of the County's current utility scale solar regulations on farms in the AZD and prior decisions taken by the BZA on special exceptions for solar support the proposed ZTA language above. In addition, it is important to note that community solar projects, including this Project, serve the public interest by allowing consumers, who do not wish to install solar panels on their property or who are unable to do so, to purchase solar energy. Community solar projects of this type are limited in scope by State law, have substantially less impact on agricultural land than the typical larger scale utility solar project, and are required to have security fences pursuant to the National Electric Code. The proposed ZTA is also consistent with the Kent County Comprehensive Plan's sustainability and environmental goals. Finally, the effect of the proposed ZTA would be limited to solar projects in the AZD and RCD since the term "area of use" does not appear in other sections of the Code.

Thank you for considering our comments on the proposed ZTA and for your continued attention to this matter. We look forward to further engaging in the ZTA process and would be happy to provide additional information and feedback as needed.

Very truly yours,

A handwritten signature in black ink, appearing to read "AK", is located below the closing text. The signature is stylized and somewhat abstract.

Anthony P. Kupersmith

cc: Carla Gerber, Deputy Director of Planning, Housing, and Zoning
Cory McCandless, SGC Power
Connor Gonzalez, SGC Power

BEFORE THE KENT COUNTY BOARD OF APPEALS

IN THE MATTER OF: *
THE APPLICATION OF 25809a, *
STILL POND NECK, LLC *
FOR SPECIAL EXCEPTION * Case No: 22-09
APPROVAL FOR A UTILITY *
SCALE SOLAR ENERGY SYSTEM *

* * * * *

MEMORANDUM AND DECISION

This matter is before the Kent County Board of Appeals (“the Board”) pursuant to Article VII, Sections 2 and 7.57 of the Kent County Land Use Ordinance. The Applicant, 25809a Still Pond Neck, LLC., seeks special exception approval for a utility scale solar system on Still Pond Neck Road near the village of Coleman.

A. Procedural History

On February 17, 2022, the Applicant submitted its application. The application was scheduled for a hearing before the Board of Appeals for April 18, 2022, at 5:00 p.m. Public notice was submitted to and appeared in the *Kent County News* on April 7, 2022, as required by the Land Use Ordinance. The hearing notice was posted on the Applicant’s property on March 17, 2022. Notice of the application and hearing was mailed to adjoining neighbors on March 14, 2022.

The matter was heard by the Board on April 18, 2022. Dr. Al Townshend, P. Joan Horsey, and John R. Massey, Board members were present, as was David Hill, alternative Board member. William Mackey, Planning Director, and Mark Carper, Associate Planner, were present for the Department of Planning, Housing, and Zoning. Mike Pelletier acted as Clerk to the Board and Christopher F. Drummond, Esquire as attorney to the Board. The Applicant was

represented by Tony Kupersmith, Esquire, of Easton, Maryland, Ted Hastings, a Civil Designer with Becker Morgan Group, Inc., and Bruce Wilson and Cory McCandless, of SGC Power.

B. Board's Powers And Duties

Article X, Section 2 of the Land Use Ordinance provides that the Board shall “hear and decide applications for special exceptions” and may limit such approvals “by such conditions as the case may require.” Article VII, Section 2 provides that the Board “may authorize buildings, structures, and uses as special exceptions in specific instances . . . provided the location is appropriate and consistent with the Comprehensive Plan.” The general criteria for special exception approval are set forth in Article VII, Section 2 as follows.

1. The nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures;
2. Traffic Patterns;
3. Nature of surrounding area;
4. Proximity of dwellings, houses of worship, schools, public structures, and other places of public gathering;
5. The impact of the development or project on community facilities and services;
6. Preservation of cultural and historic landmarks, significant natural features and trees;
7. Probable effect of noise, vibration, smoke and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties;
8. The purpose and intent of this Ordinance as set forth in Article II; 406
9. Design, environmental, and other standards of this Ordinance as set forth in Article V;
10. The most appropriate use of land and structure;
11. Conservation of property values;
12. The proposed development's impact on water quality;
13. Impact on fish, wildlife and plant habitat;
14. Consistency with the Comprehensive Plan, Land Use Ordinance, and where applicable the Village Master Plan;
15. Consistency with the Critical Area Program; and
16. Compatibility with existing and planned land use as described in the Comprehensive Plan, Land Use Ordinance, and where applicable the Village Master Plan.

A proposed utility scale solar energy system may be approved as a special exception in the AZD District under the following specific circumstances found in Article VII, Section 7.57.25:

- a. A solar collection device or combination of devices are designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
- b. Screening, capable of providing year-round screening, is provided along all sides that do not collect energy.
- c. Roof mounted solar collection devices shall not extend more than 10 feet from the top of the roof. The total height of the building, including the solar collection devices, shall comply with the height regulations established for each zoning district.
- d. Solar collection devices shall not exceed 38 feet in height.
- e. The solar collection system shall be incidental to the use of the farm.
- f. Installation of the solar collection system shall not adversely impact adjacent properties.
- g. All structures associated with the solar collection system shall be neither visually intrusive nor inappropriate to their setting.
- h. All solar collection devices shall register with the Department of Emergency Services and shall submit a map noting the location of the solar collection devices and the panel disconnect.
- i. Other than wire size, there shall be no alteration of utility infrastructure to accommodate the system.
- j. The area of use may not exceed 5 acres onsite. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.
- k. In AZD, the area developed by a utility scale solar energy system is considered development and counted toward the maximum percentage of the property in lots.
- l. Tree removal shall be minimized and any removal shall be mitigated in accordance with the Critical Area Program requirements.
- m. The applicant shall demonstrate that a utility scale solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a structure listed in the Kent County Historic Site Survey, an historic district, or the Chesapeake Bay and its tributaries.

C. Relevant Facts

The Applicant proposes to construct a 1MW solar energy system (“SES) on an 85-acre parcel of land owned by Raymond and Joyce Stoltzfus. The property has been assigned a 911 address of 26001 Still Pond Neck Road and is shown on Tax Map 12 as Parcel 98. It is zoned in the AZD District. The property is largely used for traditional agricultural activities on approximately 65 acres of tillable land. The balance of the property is wooded. The property is unimproved with residential or agricultural structures.

Mr. Kupersmith first noted that the SES had received a favorable recommendation from the Planning Commission at its meeting on April 7, 2022. He informed the Board that the Applicant had reviewed the report from Planning staff and concurred with its findings and recommendations. Mr. Kupersmith explained that the proposed SES will not exceed five (5) acres in area and is located in the northwest corner of the property. If approved and constructed, the SES will become part of the State’s Community Solar Pilot Program. SES in the Pilot Program may not exceed a capacity of 2MW. Mr. Kupersmith acknowledged that the Planning Commission requested that the Applicant study re-orienting the SES from the proposed east-west configuration to a north-south configuration to reduce the width of the SES when viewed from Still Pond Neck Road. Mr. Kupersmith directed the Board’s attention to a report prepared by Richard Gilker, a professional engineer with SGC Power. Mr. Gilker’s report concluded that a 90° rotation of the SES will require additional motors to turn the panels, increasing maintenance costs and the potential for mechanical failures, and will reduce the efficiency of the SES.

Mr. Kupersmith explained that the woodlands along the southern border of the property will shield views of the SES from the few residences to the south. The village of Coleman is

approximately ½ mile away from the property and will be unaffected by the SES. The surrounding properties are dominated by agricultural fields and woodlands. At the request of Planning staff, the landscape buffer surrounding the SES has been increased to a width of 60'. No trees will be removed to accommodate the SES and the Applicant is aware that it will need to comply with the Forest Conservation Act. Compliance with the latter will likely be accomplished through retention of existing woodlands through a long-term protective agreement. Grading of the site of the SES will not be necessary. The Community Solar Pilot Program prohibits the addition of solar panels once a SES is accepted into the Program so that a larger system on the property cannot occur.

Dr. Townshend inquired whether the SES will produce glare and whether any of the panels will exceed 38' in height. Mr. Kupersmith replied that solar panels are now designed to be non-reflective and will not exceed about 10' in height. Dr. Townshend asked whether the SES was "incidental to the use of the farm" noting that the current use of the property does not require any electricity. Mr. Kupersmith responded that the SES would be incidental as it will not disrupt the principal agricultural use of the property.

The Board next heard from Mr. Hastings. He explained that the supporting poles for the panels will be driven into the soil and will not be anchored in concrete. The Applicant will provide appropriate stormwater management in compliance with the State Manual. The stormwater management facilities will be non-structural so that excavating retention ponds and the like will not occur.

The Board then heard from Ms. McCandless. She testified that the Applicant has been working on the project for approximately 1½ years. The Applicant is a wholly owned subsidiary

of SGC Power, LLC located in Elkridge, Maryland. Ms. McCandless described the Citizens Participation Plan the Applicant undertook as required by the Pilot Program and Planning staff. Notice of the proposal and information about the Applicant and the SES was sent by mail to all property owners potentially impacted by the proposed land use. Ms. McCandless explained that electricity subscribers to a community solar installation in Maryland that is interconnected with the Delmarva Power grid must live within Delmarva Power's service area.

Mr. Wilson then testified. He explained that a 1MW community solar installation would expect to have approximately 300 electricity subscribers. The SES proposed by the Applicant will be accepted into the Pilot Program in the "open" category. Thirty percent of the power generated must be sold to low/moderate income subscribers who can expect a savings of 25%. Other subscribers can expect savings on electricity of about 10%. The Applicant will lease the area of the SES under an agreement providing for a 20-year term with two (2) 10-year extensions. In response to a question from Mr. Massey, Mr. Wilson acknowledged that the project will cover approximately 9.5 acres when the 20' perimeter road and the 60' landscaped buffer are included. The SES, as proposed, would have 5 acres of solar panels.

Mr. Massey directed Mr. Wilson's attention to Section 7.57.25(j) which limits the "area of use" of a SES to "5 acres onsite." Mr. Massey inquired whether the "area of use" includes the perimeter road and landscaped buffer and, if so, how may the Board approve a proposal that will have an area of 9.5 acres. Ms. McCandless responded by noting that the Applicant had a similar concern and inquired of Planning staff. Ms. McCandless reported that staff's interpretation was that "area of use" refers only to the area of solar panels. Mr. Mackey agreed with Ms. McCandless noting that the 5-acre limit was created as a result of the Renewable Energy Task

Force's recommendations delivered in 2013. The landscaping requirements for SES were created in 2020 and essentially are "add on" that should not be included in the "area of use." Mr. Hill, a member of the Renewable Energy Task Force, commented that he understood the 5-acre maximum to apply to all required components of a SES. Dr. Townshend expressed his concern that the proposed SES was not needed for onsite structures or agricultural uses and approving the application could set a precedent for much larger solar projects in the AZD including the Morgnec Road Solar project.

In light of the uncertainty of the legal effect of the language of Section 7.57.25, Mr. Massey moved that the Board meet in closed session to receive advice from Mr. Drummond. Ms. Horsey seconded the motion which passed unanimously. The Board then met in closed session from 6:00 p.m. to 6:25 p.m.

Once the Board returned to the open hearing, Dr. Townshend explained that his concerns regarding setting a precedent for larger solar projects had been allayed. Mr. Massey noted that the Land Use Ordinance permits SES in the AZD by special exception if the specific standards set forth in Section 7.57.25 are satisfied.

Ms. McCandless testified that the Community Solar Pilot Program standards are very strict. Locations permitted are few. Because Delmarva Power allows interconnections only to feeder lines, locating SES near roads cannot be avoided. Because only a few sites meet Pilot Program requirements and because Delmarva Power limits interconnections, Ms. McCandless opined that a proliferation of community solar projects is unlikely in Kent County.

Mr. Kupersmith argued that "incidental" and "accessory" have different meanings. Consequently, a SES need not be subordinate to or supportive of an existing legal use of

property. Because the 5 acres of panels will not interfere with the predominant agricultural use of the property, they are “incidental” to that use. The Board acknowledged that “incidental” is not synonymous with “accessory.”

Questioned by Mr. Kupersmith, Mr. Wilson testified that the proposal meets each of the standards of Section 7.57.25.

The Board then heard from Bob Payne, an adjacent landowner. Mr. Payne expressed his view that the property should remain wholly agricultural. Mr. Payne’s property is subject to a conservation easement administered by the Eastern Shore Land Conservancy.

Andy Simmons, who resides across Still Pond Neck Road from the property, objected to taking prime soil out of agricultural production. Mr. Simmons inquired whether Section 7.57.25(j) will prevent other nearby properties from proposing SES. Mr. Drummond explained his opinion that the “aggregate” language in the subsection was intended to prevent a single landowner from adding adjacent land to circumvent the 5-acre maximum for SES. Mr. Wilson, though, explained that the Pilot Program prevents SES on adjacent properties. Consequently, if properties adjacent to the property proposed for the Applicant’s SES decide to pursue SES approval, they may not apply for inclusion in the Pilot Program.

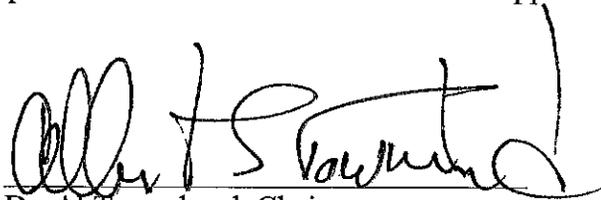
Mr. Carper highlighted the salient points of the staff report which recommends approval of the special exception. He noted that the Applicant has proposed to move the SES approximately 80' further away from Still Pond Neck Road in light of the Planning Commission’s concerns.

D. Deliberations, Conclusions Of Law/Findings Of Fact

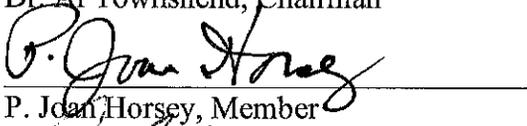
Mr. Massey reiterated his concern that the proposed use, if approved, would be

inconsistent with the 5-acre maximum size set forth in Section 7.57.25(j). Ms. Horsey concurred and asserted that, in her view, "area of use" is intended to include all components of a SES. Dr. Townshend asked Mr. Drummond whether any utility scale SES could be approved if the 5 acre maximum applied to all components. Mr. Drummond was uncertain that a SES with 2-3 acres of panels intended for off-site sale of electricity would be viable. Mr. Drummond suggested that the Board consider a condition of approval that would limit site plan approval to 5 acres inside the fenced area of the SES. Mr. Drummond commented that Section 7.57.25, as drafted, lacks clarity that could be resolved through legislative action. As written, Section 7.57.25(j) refers to the "use" which reasonably includes all required elements of a SES. Consequently, the perimeter road and landscaping are part and parcel of the "use" and properly included in the 5-acre maximum. Mr. Massey expressed his view that the Board is bound to apply the Land Use Ordinance as written. Accordingly, Mr. Massey moved to deny the application on the ground that the proposed "area of use" exceeds 5 acres and, therefore, the application does not meet the requirements of Section 7.57.25(j). Ms. Horsey seconded the motion. Dr. Townshend expressed his misgivings about denying the application, particularly as the Applicant had followed the interpretation provided by Planning staff. He agreed, though, that the language of the Land Use Ordinance compelled the result. The motion was then approved unanimously.

Date: April 28, 2022



Dr. Al Townshend, Chairman



P. Joan Horsey, Member



John R. Massey, Member



TO: Kent County Planning Commission
FROM: Carla Gerber, Deputy Director
MEETING: June 2, 2022
SUBJECT: Brent Nelson
Map 31, Parcel 5 Comprehensive Water and Sewerage Plan Amendment

Executive Summary

Request by Applicant

Brent Nelson is requesting an amendment to the Comprehensive Water and Sewerage Plan to allow a connection to a Denied Access Line.

Public Process

Comprehensive Water and Sewerage Plan: Section 1.4.6 Denied Access includes the conditions by which an allocation may be granted to a vacant property along the denied access line.

Summary of Staff Report

Mr. Nelson purchased a parcel that does not perc and therefore does not meet the conditions for obtaining a sewer allocation. He is requesting an amendment of the Comprehensive Water and Sewerage Plan that will waive the requirements for allocations on denied access line. His request is consistent with the Comprehensive Plan as his property is adjacent to other houses and will not negatively affect any nearby farms.

Recommendation

Staff recommends that the Planning Commission makes a finding of consistency with the Comprehensive Plan and the Land Use Ordinance.

PRELIMINARY STAFF REPORT

TO: Kent County Planning, Housing, and Zoning
FROM: Mark Carper, Associate Planner
DATE: May 25, 2022
SUBJECT: Brent Nelson, Map 31, Parcel 5
Comprehensive Water and Sewerage Plan Amendment

DESCRIPTION OF PROPOSAL

Brent Nelson has requested an amendment to the Comprehensive Water and Sewage Plan to permit an allocation for Map 31, Parcel 5, which is an undeveloped, wooded parcel adjacent to a Denied Access Line for the Chesterville Forest extension. The Chesterville Forest Extension was constructed in 2011 to address failing septic systems of existing homes in Chesterville Forest, a Rural Village Priority Funding Area, and along River Road between Chesterville Forest and Millington. A project for which the Comprehensive Water and Sewage Plan was amended on May 5, 2009.

Mr. Nelson purchased the property in 2013. He has stated that he would like to build a house for his son, but the property does not perc. In 1995, the Health Department found that there were no suitable soils and a high-water table which made the property unable to have an on-site sewage disposal area. Mr. Nelson did not submit any more recent correspondence from the Health Department.

RELEVANT ISSUES

- I. Permitted and Accessory Uses
 - A. *Applicable Law:* Article V, Section 1.2 of the Kent County *Land Use Ordinance* establishes the permitted principal uses and structures. A single-family dwelling is a permitted use.
 - B. *Staff and TAC Comments:* Parcel 5 is currently prohibited from connecting to the Denied Access line of the Chesterville Forest Extension, which prevents construction of a new, single-family dwelling and associated accessory uses.
- II. Amendment
 - A. *Comprehensive Plan:* A goal of the Kent County *Comprehensive Plan* is to preserve its rural character. Much of the County land is designated as Priority Preservation Area (PPA), of which one of the goals is to maintain agricultural land and forests (44). A principal strategy toward this goal is the retention of the AZD, and, of the policies enacted for that purpose, there is included the following:
 5. Public Water and/or sewer systems are not planned for this zoning district and will not be extended into or through this zoning district except to correct situations where:
 - a. An existing developed property has a dysfunctional on-site wastewater treatment or water supply system (hereafter referred to as a sanitary system) that, due to the parcel's characteristics, cannot be replaced with an existing system meeting current health and environmental standards; and
 - b. There exists a public or other community sanitary system that can practically and economically supply service to the parcel and its existing uses; and
 - c. The provision of such services will not result in material expansion, new lot creation or otherwise materially intensify the use of the property; and
 - d. The Planning Commission makes a finding that that provision of the service is consistent with this Comprehensive Plan; and

- e. A Comprehensive Water and Sewerage Plan amendment is approved by the County and the State; and
 - f. This policy shall not be interpreted to allow additional new development and/or material intensification of an existing use and is reserved for special circumstance to protect public health and the environment and not to foster development of residential, commercial, and/or industrial uses in this zoning district. (45-46).
- B. *Comprehensive Water and Sewerage Plan: Section 1.4.6 Denied Access* includes a provision that connection of any property or parcel to a Denied Access line is prohibited unless all of the following is demonstrated:
1. The allocation is for an improved legal lot of record that existed prior to the County adoption of the denied access line in the Water and Sewer Plan, and the local health department has certified that the septic system is failing and cannot be corrected on site; or the connection is to an unimproved lot of record that can demonstrate it is buildable by passing on-site well and septic requirements;
 2. The served properties are contiguous to the right-of-way containing the service main;
 3. There is adequate capacity in the Treatment system to serve the new area or the County has allocation available from the municipality; and
 4. There shall be only one allocation granted per lot, except that additional allocations may be granted if there are multiple authorized uses existing on the lot as of the date of the installation of the line, such as: apartment, small business, second home, so on. (10-11)
- C. *Staff and TAC Comments:*

- Granting an allocation to this 5-acre parcel would not disrupt agricultural use or the rural character of the AZD. The parcel is adjacent to other small, residentially-used parcels and the construction of a new home will not affect nearby agricultural operations.
- Granting an allocation to an existing lot will not materially intensify development in this area.
- The proposed site development – single-family dwelling– is allowable.
- The Chesterville Forest Extension has capacity for additional users, and additional users actually increase the operating efficiency of the wastewater treatment plant.
- Regarding the County’s Comprehensive Water & Sewerage Plan for provisions for connecting to a Denied Access line, the site (Parcel 46), the request meets three of the four standards:
 - 2) The served properties are contiguous to the right-of-way containing the service main;
 - 3) There is adequate capacity in the Treatment system to serve the new area or the County has allocation available from the municipality; and
 - 4) There shall be only one allocation granted per lot, except that additional allocations may be granted if there are multiple authorized uses existing on the lot as of the date of the installation of the line, such as: apartment, small business, second home, so on.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission makes a finding of consistency with the Comprehensive Plan and Land Use Ordinance.



**DEPARTMENT OF
PUBLIC WORKS**

709 Morgnec Road
Chestertown, MD 21620
410-778-2600

Michael S. Moulds, P.E., Director
mmoulds@kentgov.org

Memorandum

To: William Mackey, Director
Copy: Shelley Heller, County Administrator
From: Mike Moulds, PE Director of Public Works 
Date: May 26, 2022
Re: M31-P5 Water and Sewerage Comprehensive Plan Amendment

We have received the attached request from Mr. Brent Nelson for an amendment to the Comprehensive Water and Sewerage Plan to include Map 31, Parcel 5 in the sewer service area currently identified on Figure 4-5 - Town of Millington Wastewater Treatment Plant and Sewerage Area as outside of the existing and planned county service area for sewer. In addition, Parcel 5 is located adjacent to a denied access line. Parcel 5 is undeveloped. Included with this Memorandum is Figure 4-5 with the locations of Parcel 5 noted.

The Service Area is known as the Chesterville Forest extension and was constructed in 2011 to address existing home failing septic systems along Chesterville Forest Road. The Comprehensive Water and Sewerage Plan amendment for the project was adopted by Resolution on May 5, 2009. Included for reference is the Resolution.

Parcels adjacent to Parcel 5 including Parcels 122, 151, 18 and 126 are currently served with public sewer service.

Denied Access

The Comprehensive Water and Sewer Plan includes a provision in Section 1.4.6 Denied Access Facilities that *Connection of any property or parcel to a "Denied Access" line is prohibited unless all of the following is demonstrated:*

- 1. The allocation is for an improved legal lot of record that existed prior to the County adoption of the denied access line in the Water and Sewer Plan, and the local health department has certified that the septic system is failing and cannot be corrected on site; or the connection is to an unimproved lot of record that can demonstrate it is buildable by passing on-site well and septic requirements;*
- 2. The served properties are contiguous to the right-of-way containing the service main;*

3. *There is adequate capacity in the treatment and conveyance system to serve the new area or the County has allocation available from the municipality; and*
4. *There shall be only one allocation granted per lot, except that additional allocations may be granted if there are multiple authorized uses existing on the lot as of the date of the installation of the line, such as an apartment, small business, second home, so on.*

The applicant at this time is able to meet conditions 2, 3 and 4. The property is wooded and undeveloped. Attached is correspondence from the Kent County Health Department dated April 18, 1995 noting that the lot is unsatisfactory for on-site sewage disposal.

Mr. Nelson is requesting a waiver of condition 1 in order to construct a single family home for a family member.

The Department of Public Works has no objection to the proposed amendment as it allows the use of an available connection to the sewer system and there is County sewer capacity available. To be able to extend water and sewer to areas of need, the County must rely on planned connections to the system to provide the service revenue to meet debt service and maintain the availability of this capacity.

Proposed Amendment Language

The Kent County Comprehensive Water and Sewerage Plan, 2018 Update is hereby amended to include a property (Tax Map 31, Parcel 5) into the Existing County Service Area for the Town of Millington Wastewater Treatment Plant and Sewerage Service Area (Figure 4-5). A sewer allocation for the property is limited to one allocation. Access to public sewer is denied for any future lots that maybe subdivided after the date of this amendment.

Brent Nelson
5111 Crosby Road
Rock Hall, MD 21661

April 7, 2022

Mr. Michael Moulds, Director
Department of Public Works
709 Morgnec Road
Chestertown, MD 21620

Dear Mr. Moulds,

This letter is being sent to you for review of a request to amend the current Comprehensive Water and Sewerage Plan for Kent County, Maryland to permit an allocation for sewer service to a parcel located on River Road west of the town of Millington.

We own property "Map 31 Parcel 5" where we would like to obtain an allocation for public sewer. Parcel 5 is 5.47 acres. We would like to build a single-family home for our son. We understand this on a "Denied Access" of the sewage area. The site is not able to be served by an on-lot system. We are willing to not be able to further sub-divide the property.

Your consideration and recommendation for approval of this request is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Brent Nelson". The signature is written in a cursive style.

Brent Nelson

cc: Bill Mackey, Director, Planning, Housing, and Zoning

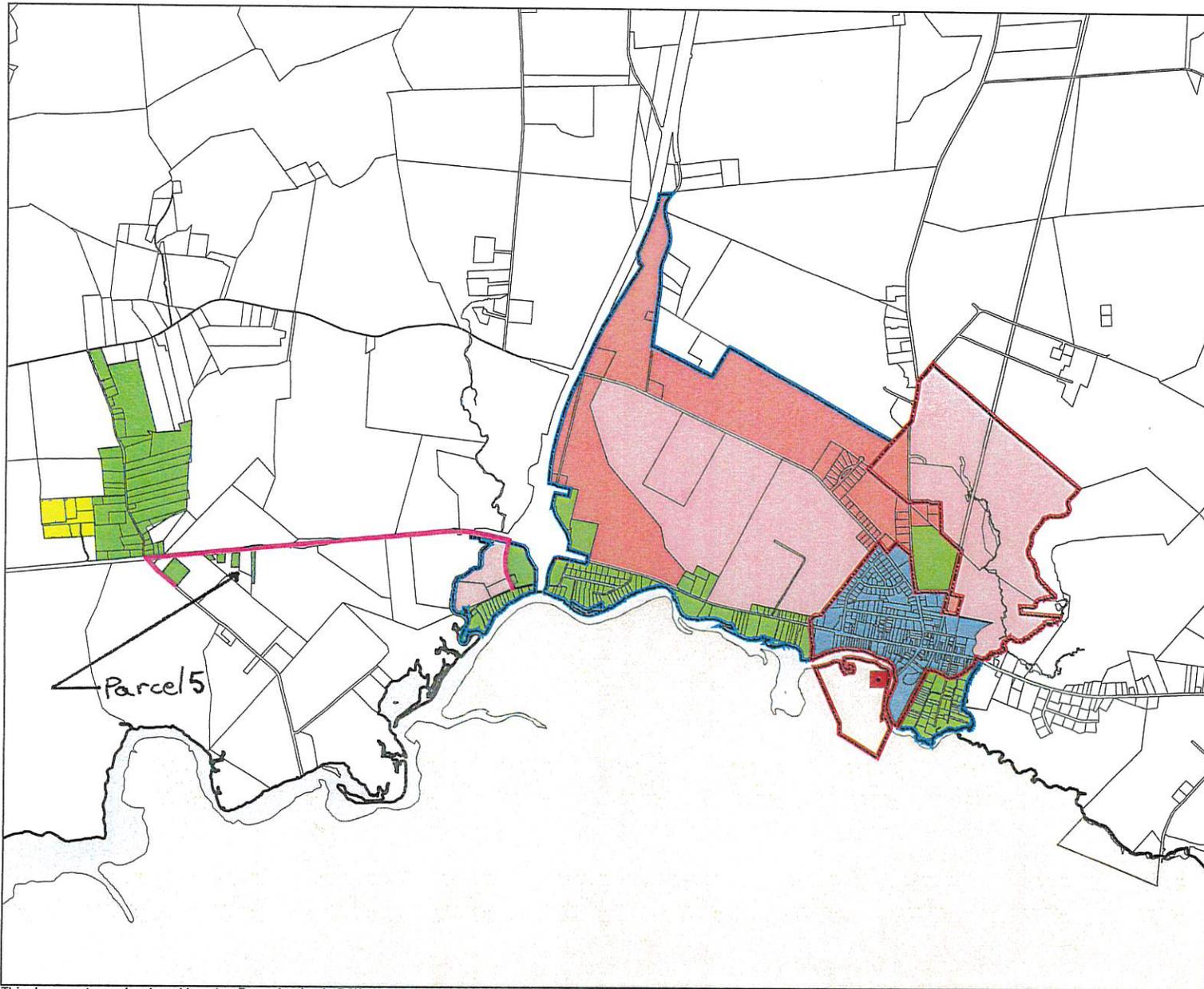


FIGURE 4-5
TOWN OF MILLINGTON
WASTEWATER TREATMENT PLANT
AND SEWERAGE SERVICE AREA

Legend

- Treatment Plant
- Denied Access Force Main
- Existing Town Service
- Planned Town Service (3-5/6 years)
- Planned Town Service (6/7-10 years)
- Existing County Service
- Planned County Service
- Town Boundary
- Proposed Annexation Area
- County Boundary

NOTES:
 Includes Chesterville Forest Service Area

Kent County
 Comprehensive Water & Sewer Plan
 2018



1 inch = 2,000 feet

This document was developed in color. Reproduction in B/W may not represent the data as intended.



COUNTY OF KENT

KENT COUNTY HEALTH DEPARTMENT



STATE OF MARYLAND

John A. Grant, M.D., M.P.H., Deputy State & County Health Officer
P.O. Box #359, Chestertown, Maryland 21620 • Phone: 778-1350

April 18, 1995

Mr. Melvin Shorter
Rt. 2
200 Traveled Lane
Centreville, Md. 21617

Re: Kent County Tax Map 31, Parcel 5
Building Lot Evaluation Application #LE-036-95

Dear Mr. Shorter:

The lot evaluation performed on the above referenced property has been determined to be UNSATISFACTORY for on-site sewage disposal (construction of a septic system or other approved treatment device and subsurface disposal).

The reasons for this determination are:

- Not enough usable area () due to: Lot size (), Slope ()
- Not enough suitable soil ()
- No suitable soil (X)
- High water table (X)
- History of flooding ()
- History of system failure in area ()
- Other _____

The Health Officer will be conducting a review of this denial. Should you wish to be present, please call 778-1361 within 10 days to schedule an appointment. At this time, you will have an opportunity to provide information which you feel may not have been considered in this evaluation.

The Department of Health and Mental Hygiene policy requires that a copy of this rejection be forwarded to the Assessment Office for appropriate reduction of property taxes. If the results of the evaluation are reaffirmed, notification will be sent to the Assessment Office.

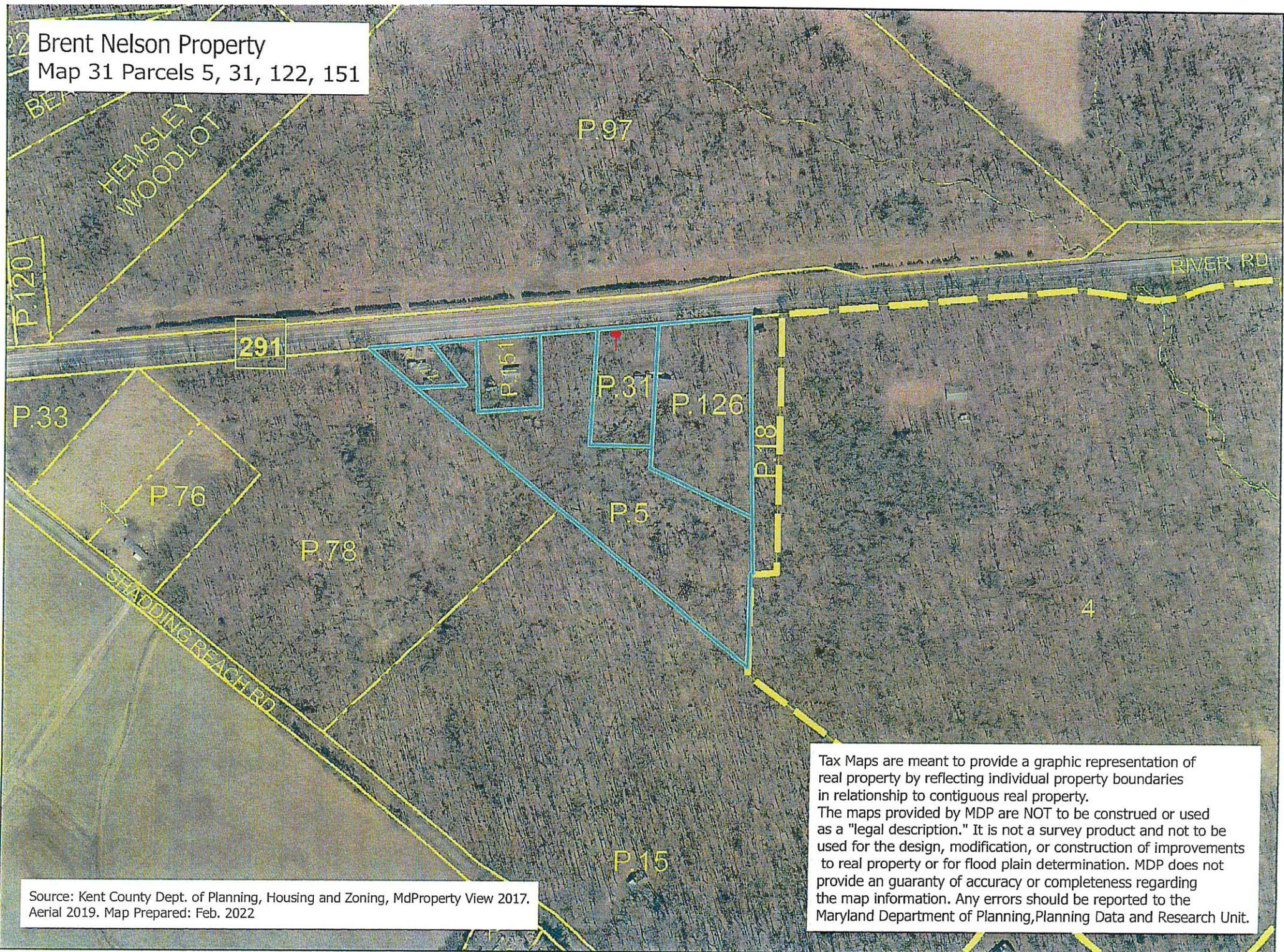
Sincerely,

Edward L. Birkmire
Edward L. Birkmire DPM
Director of Environmental Programs

ELB/dm

cc/ James Voshell
Millington, Md. 21651
Nancy Hubbard, Hogans Agency

Brent Nelson Property
Map 31 Parcels 5, 31, 122, 151



Source: Kent County Dept. of Planning, Housing and Zoning, MdProperty View 2017.
Aerial 2019. Map Prepared: Feb. 2022

Tax Maps are meant to provide a graphic representation of real property by reflecting individual property boundaries in relationship to contiguous real property. The maps provided by MDP are NOT to be construed or used as a "legal description." It is not a survey product and not to be used for the design, modification, or construction of improvements to real property or for flood plain determination. MDP does not provide an guaranty of accuracy or completeness regarding the map information. Any errors should be reported to the Maryland Department of Planning, Planning Data and Research Unit.

4.5.5.1. Chesterville Forest

The Kent County Department of Public Works owns, operates, and maintains the Chesterville Forest sewage collection system. In 2011, the low-pressure sewage collection system was constructed to Chesterville Forest Road, a Priority Funding Area by an extension of the County portion of the Millington collection system. The project provided connections for 37 properties with failing septic systems identified by the Kent County Environmental Health Department. Select properties along MD Route 291 (River Road) were provided service due to failing septic systems. The force main along River Road from its point of connection with the force main in West Edge Road to Chesterville Forest Road is deemed a "Denied Access Force Main" in accordance with the County's policy see Section 1.4.6, Denied Access Facilities. See Appendix 4-I Chesterville Forest Amendment for service area details.

System History and Upgrades:

The Chesterville Forest area is a rural village with failing septic systems. The community is a Priority Funding Area. In 2007, residents along Chesterville Road approached the Kent County Commissioners seeking help with their failing septic systems. The Kent County Health Department performed a sanitary survey in the Chesterville Forest Area.

In 2009, due to the inability to locate a site for the treatment facilities, the County developed a new study to convey the wastewater to Millington via the Edge Road Pump Station, and the Kent County Health Department conducted a sanitary survey in the River Road area. Based on the results of the study and sanitary survey, the County connected the Chesterville Forest development to the Millington wastewater treatment plant, by use of a low-pressure grinder pump force main system traversing MD Route 291 and intersecting with an existing force main at Edge Road. The connecting sewer main to the Millington Service area is a "Denied Access Sewer Main". Service is limited to the existing lots within the rural village PFA and those single connections indicated in the MDE amendment.

Construction was completed in 2011, providing connections for 37 of the properties in the service area. A sewer main and service connections could not be provided to the remaining properties at that time due to an inability to obtain a right-a-way or easement across private property to access the parcels.

4.5.6. Kennedyville

The Kent County Department of Public Works owns and operates the Kennedyville wastewater treatment system. A map of the service area is included at the end of this chapter.

Table 4.5.6 in Appendix 4-C summarizes the wastewater treatment system technology, treatment process, service area, design and production flows and basic discharge information. The treatment facility is permitted for a flow of 60,000 gpd. The flow for year 2015-2017 was 11,000 gpd.

The Kennedyville wastewater treatment plant discharges to Morgan Creek, which is Use I water and protected for water contact recreation and aquatic life. It is located within the Middle Chester Watershed. With the new discharge permit issued in 2016 the nutrient limits for nitrogen and phosphorus were set at 1,399 lb/year and 233 lb/year respectively.

The Kennedyville sewerage service area includes 129 connections (EDUs).

RESOLUTION

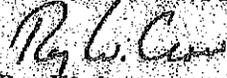
AMENDMENT TO THE COMPREHENSIVE WATER AND SEWERAGE PLAN

Creation of Chesterville Sewerage Service Area

The County Commissioners of Kent County, Maryland hereby amend the Comprehensive Water and Sewerage Plan to include addition of the Chesterville Sewerage Service Area which includes construction of a low pressure grinder pump system to serve the properties along Chesterville Forest Road, which are within a "priority funding area". This project was originally approved on February 26, 2008 but was unable to continue due to unavailability of land for on site treatment and disposal. The new proposal has a low pressure force main traversing along MD 291 and intersecting with an existing force main along Edge Road. The existing line already connects to the Millington treatment plant and the county has enough excess capacity under the agreement with the town of Millington to include these properties. Four (4) properties between Chesterville Forest Road and the connection on Edge Road have been identified by the Kent County Health Department as having failing septic systems; Tax Map 31, Parcel #18, #76, #122, and #151. The sewerage collection system from the intersection of Chesterville Forest Road and MD 291 to the connection point along Edge Road will be declared a denied access line in accordance with the county's policy.

This amendment shall take effect on the 5th day of May, 2009, the date of adoption by the Board of County Commissioners.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


Roy W. Crow, President


Ronald H. Fithian, Member


William W. Pickrum, Member

ATTEST:


Janice Fletcher, Executive Assistant

To: Kent County Planning Commission
From: Carla Gerber, Deputy Director
Meeting: June 2, 2022
Subject: DRAFT Land Preservation, Parks, and Recreation Plan (LPPRP)

Memorandum

Attached for your review is the DRAFT Land Preservation, Parks and Recreation Plan (LPPRP). The Program Open Space Law requires the 23 counties and Baltimore City to prepare local Land Preservation, Parks and Recreation Plans every five years. The information in the local plans is then compiled into a statewide Land Preservation, Parks and Recreation Plan. Kent County's plan was prepared according to guidelines provided by the Maryland Departments of Planning and Natural Resources. Local POS funding is contingent upon submittal of the local Plan to the Maryland Department of Natural Resources.

The Plan has three main elements: Parks, Recreation and Open Space; Natural Resource Conservation and Land Preservation; and Agricultural Land Preservation. The goals and strategies for the chapters on Natural Resource Conservation and Agricultural Land Preservation are based on those identified in the Comprehensive Plan.

The overall objectives of the LPPRP include the following:

- ❖ Identify the needs and priorities of current and future Kent County residents and visitors for outdoor recreation;
- ❖ Achieve local land preservation goals;
- ❖ Ensure that public investment in land preservation and recreation supports, and is supported by, local programs that influence land use and development;
- ❖ Identify desirable improvements to policies, plans, and funding strategies to better-achieve the Plan's goals and improve state, local, and private return on investment; and
- ❖ Make recommendations to agencies, State and local elected officials, and administrators.

The draft plan has already been reviewed by DNR for compliance with the guidelines. Upon review by the Parks and Recreation Advisory Board and the Planning Commission, the Plan will be presented to the County Commissioners for adoption. Today, we are asking for a letter of recommendation for approval.

The Executive Summary is attached, and the entire draft plan is on the Parks and Recreation webpage: <http://www.kentparksandrec.org/PRAB/Kent%202022%20LPPRP%20Final.pdf>



Kent County 2022 Land Preservation, Parks & Recreation Plan

*Executive
Summary
May 2022*



Executive Summary

Every five years, each of Maryland's counties and Baltimore City are required to submit a five-year Land Preservation Parks & Recreation Plan (LPPRP) to the State's Departments of Natural Resources (DNR) and Planning (MDP). The LPPRP is a requirement for county participation in Maryland's Program Open Space Local grants program. The goal of the plan is to assist in future planning at the local, state and federal levels. The information gathered in the local LPPRPs is used to compile the Maryland Land Preservation and Recreation Plan (LPRP) which serves as the Statewide Land Preservation and Recreation Plan (SCORP). The SCORP is required for Maryland to receive funding through the federal Land and Water Conservation Fund, which provides cost share opportunities for state agencies for the acquisition, development and planning of public outdoor recreation spaces.



Photo credit: Chris Cerino, Kent County Office of Tourism

The LPPRP includes three main elements:

- Parks, Recreation and Open Space
- Natural Resource Conservation and Land Preservation
- Agricultural Land Preservation

The Kent County LPPRP is amended to the County Comprehensive Plan and is used to guide the future of park development, program improvements and parks and open space land preservation within the County as well as its incorporated municipalities.

The LPPRP incorporates work prepared by the Departments of Parks and Recreation and Planning, Housing and Zoning with input from the Department of Public Works.

Location and Physical Characteristics



Kent County is located on the northern portion of the Delmarva Peninsula on the eastern side of the Chesapeake Bay directly opposite Baltimore. The County is bordered on the north by the Sassafras River, which separates it from Cecil County, and on the south by the Chester River, which separates it from Queen Anne’s County. The western border is formed by the Chesapeake Bay, and the eastern boundary is formed by the Delaware State Line. The County has a total land area of 178,428 acres, or approximately 281 square miles, and has 79,006 acres of water within its boundaries. Five incorporated towns - Betterton, Chestertown, Galena, Millington, and Rock Hall - are located in Kent County. Chestertown is the County seat.

Founded in 1642, Kent is the second oldest County in Maryland. Prior to European colonization, the area was inhabited by the Tockwogh and Wicomiss tribes. Early

European settlers were drawn to the area for its location on the Chesapeake Bay and the Chester and Sassafras Rivers, where fish were plentiful and the access to the water facilitated travel and transport. Game was plentiful in the forests, and rich soil provided agricultural opportunities. Although much has changed since then, much remains the same. The hallmarks of Kent County continue to be the Chesapeake Bay, its tributaries, and rich farmland. These resources shaped much of the economy, culture, and character, and they continue to serve as the foundation for much of Kent’s planning efforts.

Population & Demographics

Kent County’s population in 2020 was approximately 19,967, a decrease of 2.5%. The County is experiencing an aging of the population, with growth in the number of Kent residents aged 55 or older and a decline in the number of younger residents. In 2020, 44.8% of the population was 55 or older. Children and youth 19 and under accounted for 19.7% of the population. In 2010, 35.9% of Kent’s population was 55 or older and children 19 and under made up 21.9% of the population. In real numbers there were 3,889 children and youth in the County, 7,069 between 20 and 54 years old and 8,739 residents 55 and up,

The estimated median household income in Kent County in 2019 was \$58,589, a 1% increase over the median household income reported in 2015. Kent County’s household income is significantly lower than the median household income in the State of Maryland, which was \$84,805 in 2019. In 2019, the percent of the people living in Kent County who had income below the poverty level within the past 12 months increased slightly from 11.2% to 11.5%.

Comprehensive Planning

Kent County’s most recent Comprehensive Plan was updated in 2018. According to this update, the vision for the County continues to be to “preserve its historic and cultural traditions, along with its high quality of life, while embracing sufficient economic opportunities to provide for the economic well-being of our citizens.” The Plan focuses on protecting agriculture as the “linchpin” of this vision, as well as to continue to protect the quality of Kent's environment and quality of life in Kent County. Within the principles guiding the Comprehensive Plan and related to the Land Preservation, Parks and Recreation Plan are the following goals of the Comprehensive Plan:

- Stewardship of Kent’s land and waters
- Commitment to supporting agriculture and promoting the working landscape
- Ensure growth occurs in limited and specific locations in a way that complements and enhances each designated growth area’s character
- Provision of elements that enrich the lives of citizens and sustain a healthy community including a quality set of recreation and cultural activities and a safe and inviting environment.

County Parks & Recreation Goals

Kent County is committed to developing its parks and recreation system in a manner that supports and reinforces the County’s vision to preserve its historic and cultural traditions, high quality of life and the well-being of its citizens. Its network of parks and open space provides a variety of public parks and facilities including open spaces for passive recreation and enjoyment of the natural world as well as access to fields and other recreational amenities to meet the active recreational needs of the County’s residents. Goals for 2022 and beyond focus on continuing to provide quality fields, outdoor courts, and swimming pools for children and families, and youth and adults to participate in active play that improves well-being, both physically and mentally. Maintaining access to natural environments provides residents and visitors with opportunities to interact with the natural world and experience the wonders of the Chesapeake Bay, its tributaries and shorelines, as well as forestland and open fields. In addition to providing residents with important access to the outdoors and physical activity, Kent County’s parks and recreation spaces are attractive to visitors. Conservation and agriculturally based tourism have emerged as an important economic driver for the County.



The County's Capital Improvement Plan included in the LPPRP aligns with the goals identified through the planning process and include the following:

Regional Parks

- Still Pond Station Concept Plan and phased development of old Coast Guard Station property.
- Comprehensive Master Plan and phased completion of park development at Turner's Creek.
- Continued enhancements at Worton Park complex to include both redevelopment and new development of features and amenities.

Water Access

- Turner's Creek Park and Landing
- Still Pond Station Park
- Betterton Beach
- Other public water access locations that offer shoreline recreation opportunities

Trails

- Addition to trail system at Turner's Creek Park with the potential to connect to Sassafras NRMA trail system
- Work with DNR and other interested parties to continue to investigate continuation of the Gilcrest Trail, the additional four miles to Worton, and other longer trail options
- Work with the Town of Galena and other interested State agencies to explore the development of a safe walking/biking access trail along Route 213 between Galena and Georgetown.

Unique Special Use Features

- Identify location, develop master plan, and complete construction of a Skate/BMX Park at a to be identified location either in the County or through partnership in one of the municipalities
- Addition of a Dog Park at a County park location to be determined
- Extend the boardwalk at Betterton Beach to provide more access for individuals with mobility constraints
- Preservation of historic buildings (Lathim House and the Granary) located at Turner's Creek Park

Natural Resource Conservation & Land Preservation

The hallmarks of Kent County are the Chesapeake Bay and its tributaries, good soils, rich marshlands, and a landscape teeming with wildlife. These resources are the foundation from which Kent's local culture emerged. Today, they remain the foundation of Kent's economy, and are the very essence of its character. The natural resources important to Kent



County, and identified as its most valuable asset in the 2018 Comprehensive Plan, are clean air, prime agricultural land, tidal marshes, non-tidal wetlands, woodlands, large forests, ground water, the Chesapeake Bay, the Chester and Sassafras Rivers and their tributaries, ponds, mineral resources, landscapes of agriculture, waterfront, open space, historic sites, dark nighttime skies and a peaceful, unhurried atmosphere.

Through its County parks as well as State and federal green spaces, Kent County offers visitors and residents alike continued access to the natural resource lands for the physical and mental health benefits of time spent in nature.

On April 22, 2022, Earth Day, Governor Larry Hogan announced the establishment of Cypress Branch State Park as the most recent addition to Maryland's network of state parks and Kent County's second State Park. It is a 314 acre park adjacent to the town of Millington and includes a picnic area near a 3-acre fishing pond. Visitors can walk along the park's field edges and enjoy wildlife viewing and nature. Future plans for the park include restoring quail habitat and constructing hiking trails. Cypress Branch State Park is managed by Tuckahoe State Park, providing access to peaceful recreation opportunities, and the conservation of ecologically important landscapes for the benefit of our native species and the enjoyment of Kent County residents and visitors.

In addition to the new park, the State also maintains 5,319 acres of State natural resource lands in four property parcels: Millington Wildlife Management Area is the largest parcel with 3,943 acres. It provides opportunities for fishing, hiking and hunting. Kent County is also home to the Eastern Neck Federal Wildlife Management Area. This 2,284 acre property is situated on the eastern flyway for many migrating birds.

Kent County's program development strategy for natural resource conservation.

- Continue to support and promote the goals and strategies outlined in the 2018 Comprehensive Plan; the Climate Change and Sea Level Rise Adaptation Report; the Hazard Mitigation Plan; the Phase II and III WIPs; Middle and Upper Chester River

WRASs; Sassafra Watershed Action Plan; the Blackbird-Millington Study; and the efforts of the Kent County Total Maximum Daily Load (TMDL) Committee;

- Continue the strong support and County funding for land preservation and continue to participate in all State and Federal programs such as MALPF, Rural Legacy, Program Open Space, Heritage Areas, etc.;
- Identify funding sources for programs to purchase easements on sensitive area lands that do not meet the MALPF criteria;
- Promote the development of heritage and ecotourism businesses;
- Continue to require conservation subdivision techniques for new subdivisions;
- Support a no net forest loss strategy;
- Prepare the Phase III Local Watershed Implementation Plan.

Agricultural Land Preservation



Agriculture remains the County's keystone land use and is the preferred land use for most of the County. It has served as the cultural foundation for the County and is planned to continue its important economic and cultural role. Kent County's economy builds on the traditional livelihoods of farming, fishing, forestry, and hunting associated with its working landscapes and natural areas. The 2018 Comprehensive Plan identifies economic development strategies which promote and support agriculture, recognizing it as the County's primary

land-based industry with substantial potential for additional growth. This policy recognizes agriculture's key role in the County's identity and culture and its significant economic contribution. Maintenance and growth of this industry will have significant and ongoing influence on the overall prosperity and identity of Kent County. Additionally, a new generation of farmers is materializing and investing in local agriculture. Agricultural support industries and suppliers are doing likewise.

Protecting farmland and natural resources from development and encouraging growth in and around existing towns in the form of sustainable growth are fundamental goals of the Comprehensive Plan and *Land Use Ordinance*. The Comprehensive Plan emphasizes the preservation of the County's rural character and agricultural resources. Agriculture is viewed as

a permanent and preferred land use which is reflected in the goals and strategies within the current 2018 Comprehensive Plan and the regulations within the *Land Use Ordinance*.

Kent County has a strong agricultural community and participation in the various land preservation programs has been high. There is support at all levels to maintain a viable agricultural industry, with over 24% of the entire County being protected by some type of easement, which does not include publicly owned lands. Donated conservation easements tend to be located along the water, especially the Chester River. The protection of these sensitive lands ensures that important wildlife habitat will remain intact. Farms protected by the Maryland Agricultural Land Preservation Foundation and Rural Legacy are located primarily in the central part of the County, which will help maintain the agricultural infrastructure. Even with the County's low rate of land conversion, the County has been able to preserve large tracts of land and anticipates a continued high-level of interest and increased participation in the various programs.

Kent County's program development strategy for agricultural land preservation is based on recommendations for the following on-going actions:

- Continued implementation of the County's Comprehensive Plan;
- Continued support from the County Commissioners through matching funds and policy decisions;
- Increased funding through MALPF and Rural Legacy for agricultural easement acquisition to meet the demand to sell easements;
- Increased rate of easement acquisition;
- Continued landowner outreach regarding available land protection options. This includes landowner meetings, mailings and press releases;
- Continued and ongoing coordination to direct growth to the towns and villages;
- Support, to the extent possible, programs that assist the agricultural industry in economic development;
- Continue to support agricultural land preservation with local funding;
- Continue to support and work collaboratively with the Eastern Shore Land Conservancy.