

**THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND
AGENDA**

March 15, 2022

6:00 PM Call to Order/Pledge of Allegiance/Moment of Silence

Meeting Announcements

Building is Open for In-Person Attendance, for Remote Participation Dial 1-872-239-8359,
Conference ID 528 550 100#

Consent Items

#1 - Regular Session Minutes, March 8, 2022

#2 - Liquor Minutes, March 8, 2022

American Rescue Plan Act Funds

American Rescue Plan Act (ARPA) Funds Spend Plan

County Attorney

Thomas N. Yeager, County Attorney

Legislative Session Protocol

Legislative Session

Bill Mackey, Director, Planning, Housing and Zoning

First Reading of Code Home Rule Bill No. 2-2022, Hospitals and Human Care
Institutions in the Village District

Bill Mackey, Director, Planning, Housing and Zoning

First Reading of Code Home Rule Bill No. 3-2022, Home and Business Services in the
Village District

Bill Mackey, Director, Planning, Housing and Zoning

First Reading of Code Home Rule Bill No. 4-2022, Removal of the 10% Rule From
Agricultural Zoning District

Bill Mackey, Director, Planning, Housing and Zoning

First Reading of Code Home Rule Bill No. 5-2022, Setbacks for Certain Animal-
Related Uses in Agricultural Zoning District

County Attorney

Morgnec Road Solar, LLC Case No. 9499

Update

County Administrator

Sonal Ram, Director, Office of Environmental Design, Maryland Department of
Transportation

Noxious Weed Control Contract Amendment

County Administrator Report

Shelley L. Heller, County Administrator

Letter of Support - Town of Galena

Letter of Support - Choptank Community Health Systems, Inc.

Public Comment/Media Review

Procedures for Public Comment

For Your Information

Jamie Williams, Director, Economic and Tourism Development

Letter of Support - Sumner Hall

Jamie Williams, Director, Economic and Tourism Development

Letter of Support - Main Street Historic Chestertown

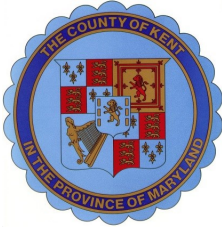
Jamie Williams, Director, Economic and Tourism Development

Letter of Support - First United Pentecostal Church of Kent County

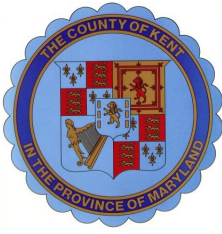
Contingency Fund

Contingency and Use of Fund Balance Report

(Meetings are conducted in Open Session unless otherwise indicated. All or part of County Commissioners' meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the Commissioners. Breaks are at the call of the President. Please note that times listed for specific items on the agenda are only estimates, and that the order of agenda items may change as time dictates or allows. Meetings are subject to audio and video recordings.)



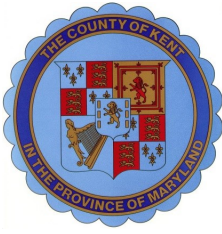
**Building is Open for In-Person Attendance, for Remote Participation
Dial 1-872-239-8359, Conference ID 528 550 100#
3/15/2022
County Commissioners Meeting**



**#1 - Regular Session Minutes, March 8, 2022
3/15/2022
County Commissioners Meeting**

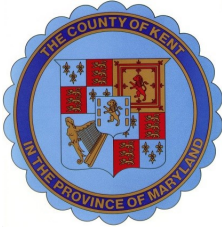
ATTACHMENTS:

Description



#2 - Liquor Minutes, March 8, 2022
3/15/2022
County Commissioners Meeting

ATTACHMENTS:
Description



**American Rescue Plan Act (ARPA) Funds Spend Plan
3/15/2022
County Commissioners Meeting**

ATTACHMENTS:

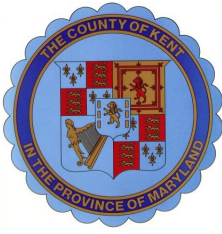
Description

3-8-2022 ARPA Fund Commissioner Report

**FY22 AMERICAN RESCUE PLAN ACT FUND
AS OF COMMISSIONER MEETING MINUTES DATED
3/8/2022**

AMERICAN RESCUE PLAN ACT FUND

DATE APPROVED	DEPARTMENT	AMOUNT APPROVED	DESCRIPTION
8/31/2021	Water & Wastewater Fund	\$ 275,000	Clariflocculator Replacement Project
9/21/2021	KC Local Management Board	112,800	Feed the Elderly Year 1
10/26/2021	Information Technology	67,429	AV System
10/26/2021	Information Technology	27,095	IT Software
12/14/2021	Information Technology	665,000	Neighborhood Grants & Infrastructure Grants Office of Statewide Broadband
1/11/2022	Water & Wastewater Fund	2,817	Change order #1 equipment and cabinet, Fairlee Clariflocculator Replacement Project
1/11/2022	Water & Wastewater Fund	90,642	Change order #2 Demo, aeration tower, Fairlee Clariflocculator Replacement Project
2/1/2022	Emergency Operations Center	14,087	A/V equipment in EOC-video conferencing
2/8/2022	Water & Wastewater Fund	110,065	SCADA Pump Station Monitoring
2/8/2022	Water & Wastewater Fund	57,500	Kent County Regional Wastewater Treatment Plant Feasibility Study-Millington/Rt 301
2/8/2022	Water & Wastewater Fund	52,910	Tolchester Wastewater Treatment Plant Influent Screen Replacement Project-design services
3/8/2022	KC Local Management Board	204,115	Feed the Elderly Year 2 and Year 3
AMOUNT OF FUNDS COMMITTED		<u>\$ 1,679,460</u>	
AMOUNT OF ARPA FUNDS		<u>\$ 3,766,777</u>	
BALANCE OF ARPA FUNDS REMAINING		<u>\$ 2,087,317</u>	

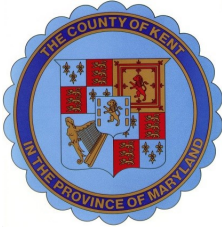


Thomas N. Yeager, County Attorney
3/15/2022
County Commissioners Meeting

Item Summary:

ATTACHMENTS:

Description



Bill Mackey, Director, Planning, Housing and Zoning
3/15/2022
County Commissioners Meeting

Item Summary:

The proposed Code Home Rule Bill would amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance, to amend Article V. *District Regulations*, Section 7. *Village District*, 7.3 *Special Exceptions*, by adding a new subsection 14, "Hospitals, rehabilitation facilities, or other similar institutions for human care but not including animal hospitals"; and to amend Article VII. *Special Exceptions*, Section 7. *Special Exceptions*, subsection 27 by adding "V" to the districts where the special exception is allowed.

The proposed amendment would extend to the Village District via special exception a health-related service use that is currently permitted by special exception within the Intense Village and Intense Village Critical Area districts. The Kent County Comprehensive Plan recognizes that the County's increasingly diversified economy includes health care and supports that industry by encouraging, "... the development of new health-related businesses, thereby reinforcing a strong economic base while meeting community needs (p. 10)."

On March 3, 2022, the Planning Commission held a public hearing and favorably recommended the zoning text amendment to the County Commissioners. A letter from the Planning Commission is attached.

Staff recommends approval of the introduction, in order to schedule the public hearing before the County Commissioners.

ATTACHMENTS:

Description

CHR 2-2022 Hospitals and Human Care Institutions in the Village District DRAFT Legislation

Letter from Planning Commission to CC

application submitted for text amendment

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

**March 15, 2022
Legislative Session Day**

**Legislative Session Day
March 15, 2022**

**CODE HOME RULE
BILL NO. 2-2022**

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, by amending Article V. *District Regulations*, Section 7. *Village District*, 7.3 *Special Exceptions*, by adding a new sub-section 14, “Hospitals, rehabilitation facilities, or other similar institutions for human care but not including animal hospitals”; and to amend Article VII. *Special Exceptions*, Section 7. *Special Exceptions*, sub-section 27 by adding “V” to the districts where the special exception is allowed.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, March 15, 2022, ordered posted and public hearing scheduled April 12, 2022, at 10:00 a.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 April 12, 2022. Reported favorably [with] [without] amendments; read a second time and ordered to be considered on April 19, 2022, a legislative session day.

**A BILL ENTITLED CHR 2-2022
HOSPITALS AND HUMAN CARE INSTITUTIONS IN THE VILLAGE DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 7. VILLAGE DISTRICT

...

7.3 SPECIAL EXCEPTIONS

...

13. *Wind energy systems, small*

14. HOSPITALS, REHABILITATION FACILITIES, OR OTHER SIMILAR INSTITUTIONS FOR HUMAN CARE BUT NOT INCLUDING ANIMAL HOSPITALS

...

ARTICLE VII. SPECIAL EXCEPTIONS

...

SECTION 7. SPECIAL EXCEPTIONS

...

27. Hospitals, rehabilitation facilities, or other similar institutions for human care but not including animal hospitals in **V**, IV and IVCA

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

(SEAL)

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

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. 2-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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



Planning Commission
Department of Planning, Housing, and Zoning

March 4, 2022

The Honorable P. Thomas Mason, President
Kent County Board of County Commissioners
400 High Street
Chestertown, MD 21620

RE: Kenah One Health Care Services – Zoning Text Amendment

Dear President Mason:

At its March 3, 2022, meeting, the Kent County Planning Commission reviewed an application submitted by Kenah One Health Care Services requesting an amendment of Article V, *District Regulations*, Section 7, *Village District*, Section 7.3, *Special Exceptions*, to include “Hospital, rehabilitation facility, or other similar institution for human care, but not including animal hospitals.” This amendment would extend to the Village district a special exception use that is currently permitted as a special exception within the Intense Village and Intense Village Critical Area districts.

Following discussion, the Planning Commission voted to send a favorable recommendation to the County Commissioners, citing the following:

- The text amendment is consistent with the Kent County Comprehensive Plan’s recognition that the County’s increasingly diversified economy includes health care.
- A strategy of the County is to “Support the County’s Health Care Industry” through encouraging, “... the development of new health-related businesses, thereby reinforcing a strong economic base while meeting community needs.”
- The public need for the amendment is to allow for development of health-related services within a populated district.

Sincerely,
Kent County Planning Commission

Joe Hickman
Chairman

cc: Latonya Cotton, Kenah One Health Care Services

**APPLICATION FOR TEXT AMENDMENT TO THE
KENT COUNTY LAND USE ORDINANCE
KENT COUNTY, MARYLAND**

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

Pursuant to Article XII, "Administrative Procedures" Section 6, "Amendments", of the Kent County Land Use Ordinance, I/We Kenah One Health Care Services

Applicant's Name

of 308 N. Crain Highway, Glen Burnie, MD 21061

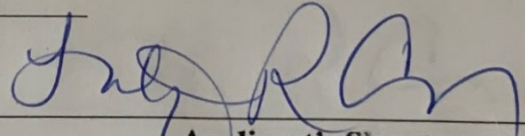
Address

410-708-9597

Telephone Number

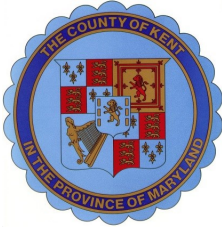
hereby petition the Kent County Commissioners to amend the Land Use Ordinance of Kent County, Maryland, as follows: Kenah One Health Care Services hereby petitions the Kent County Commissioners to amend the Land Use Ordinance of Kent County, Maryland, as follows: Amend Article 5, Section 7.3 of the Village to include Article 5, Section 8.3, 9 from the Intense Village District that includes "Hospital, rehabilitation facility, or other similar institution for human care, but not including animal hospitals" as special exception.

The purpose of the proposed amendment is to permit: Kenah One Health Care Services to use the current facility at 25000 Lambs Meadow Road, Worton, MD, as a rehabilitation facility for behavioral health treatment services.


Applicant's Signature

04/07/2022
Date

Please Note: 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.



Bill Mackey, Director, Planning, Housing and Zoning
3/15/2022
County Commissioners Meeting

Item Summary:

The proposed Code Home Rule Bill would amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance, to amend Article V. *District Regulations*, Section 7. *Village District*, Section 7.2 *Permitted Principal Uses and Structures*, to include a new subsection 27 "Home and business services such as grounds care, janitorial, exterminators, landscaping, and other repair and maintenance services, but not septic tank maintenance, subject to site plan review."

The proposed amendment would extend to the Village District a use that is already permitted within the Intense Village and Intense Village Critical Area Districts. The Kent County Comprehensive Plan recognizes the importance of supporting existing businesses and providing for more diversity in the size, number of types of businesses by promoting the development of small, locally owned businesses.

On March 3, 2022, the Planning Commission held a public hearing and favorably recommended the zoning text amendment to the County Commissioners. A letter from the Planning Commission is attached.

Staff recommends approval of the introduction, in order to schedule the public hearing before the County Commissioners.

ATTACHMENTS:

Description

CHR 3-2022 Home and Business Services in the Village District DRAFT Legislation

Letter from PC to CC re home businesses in Village

Letter from EnergyWise re Blyman ZTA

application submitted for text amendment

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

**March 15, 2022
Legislative Session Day**

**Legislative Session Day
March 15, 2022**

**CODE HOME RULE
BILL NO. 3-2022**

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, by amending Article V, *District Regulations*, Section 7, *Village District*, 7.2 *Permitted Principal Uses and Structures*, by adding a new subsection 27, “Home and business services such as grounds care, janitorial, exterminators, landscaping, and other repair and maintenance services, but not septic tank maintenance, subject to site plan review”.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, March 15, 2022, ordered posted and public hearing scheduled April 12, 2022, at 10:00 a.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 April 12, 2022. Reported favorably [with] [without] amendments; read a second time and ordered to be considered on April 19, 2022, a legislative session day.

**A BILL ENTITLED CHR 3-2022
HOME AND BUSINESS SERVICES IN THE VILLAGE DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 7. VILLAGE DISTRICT

...

7.2 PERMITTED PRINCIPAL USES AND STRUCTURES

...

26. Data processing centers, subject to site plan review.

27. HOME AND BUSINESS SERVICES SUCH AS GROUNDS CARE, JANITORIAL, EXTERMINATORS, LANDSCAPING, AND OTHER REPAIR AND MAINTENANCE SERVICES, BUT NOT SEPTIC TANK MAINTENANCE, SUBJECT TO SITE PLAN REVIEW

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

(SEAL)

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

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. 3-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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



Planning Commission
Department of Planning, Housing, and Zoning

March 4, 2022

The Honorable P. Thomas Mason, President
Kent County Board of County Commissioners
400 High Street
Chestertown, MD 21620

RE: Zebulon Blyman – Zoning Text Amendment

Dear President Mason:

At its March 3, 2022, meeting, the Kent County Planning Commission reviewed an application submitted by Zebulon requesting an amendment of Article V, *District Regulations*, Section 7, *Village District*, Section 7.2, *Permitted Principal Uses and Structures*, to include “Home and business services such as grounds care, janitorial, exterminators, landscaping, and other repair and maintenance services, but not septic tank maintenance, subject to site plan review.” This amendment would extend to the Village district a permitted use that is currently permitted within the Intense Village and Intense Village Critical Area districts.

Following discussion, the Planning Commission voted to send a favorable recommendation to the County Commissioners, citing the following:

- The text amendment is consistent with the Kent County Comprehensive Plan’s goals to support existing businesses and to expand and provide more diversity in the size, number, and types of businesses.
- The public need for the amendment is to allow for development or expansion of neighborhood businesses providing off-premise services.

Sincerely,
Kent County Planning Commission


Joe Hickman
Chairman

cc: Zebulon Blyman



Kent County Commissioners

R. Clayton Mitchell, Jr. Kent County Government Center
400 High Street
Chestertown, MD 21620

Dear Mr. Mason, Mr. Fithian, and Mr. Jacob,

I am writing this letter to support the text amendment for village zoning in Kent County, MD submitted by Zeb Blyman. I am a business owner in Kent County MD and support the expanded usage opportunities proposed by the text amendment. Commercial space in the county is limited and expansion will allow small businesses to grow, and employ more residents of the county.

EnergyWise supports emPOWER MD legislation and we are an approved contractor for Delmarva's Home Performance with the Energy Star program and MRDC's Low-income energy efficiency program funded by the department of housing (DHCD) through EmPOWER MD and DOE funding. I participate in energy efficiency programs run by Choptank Electric Cooperative and Habitat for Humanity that are funded by LMI grants provided by the Maryland Energy Administration (MEA).

EnergyWise LLC is currently small and based out of my home. We are looking to expand by purchasing a lot that one of my subcontractors owns in Melitota MD. The lot currently has a house and a shed that are in disrepair. There is an existing well and holding tanks on the property and we would like to use the lot as our home base with office space and storage space. The goal will be to improve the appearance of the lot while creating a space that will benefit the businesses' growth opportunities and ability to serve the residents of the county and the eastern shore of Maryland.

I hope that this letter of support will aid in the decision to approve the text amendment.

Thank you,

Nicholas W. Mouldsdale

Nick Mouldsdale

EnergyWise LLC | President

24960 Belleau Wood Rd. | Worton MD 21678

410-708-8836 | nick@energywisellc.com

**APPLICATION FOR TEXT AMENDMENT TO THE
KENT COUNTY LAND USE ORDINANCE
KENT COUNTY, MARYLAND**

Kent County Department of Planning, Housing and Zoning

Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7423 (phone) • 410-810-2932 (fax)

Pursuant to Article XII, "Administrative Procedures" Section 6, "Amendments", of the Kent
County Land Use Ordinance, I/We Zebulon E. Blyman

Applicant's Name

of 10672 Worton Road, Worton, MD 21678

410-708-1836

Address

Telephone Number

hereby petition the Kent County Commissioners to amend the Land Use Ordinance of Kent County,
Maryland, as follows: Amend Article 5, Section 7.2 of the Village to include Article 5, Section 8.2, 10 from
the Intense Village District that includes "Home and business services such as grounds care, janitorial, exterminators,
landscaping, and other repair and maintenance services, but not septic tank maintenance, subject to site plan review"
as permitted principle uses and structures

The purpose of the proposed amendment is to permit: Zeb's Lawn and Land Service to improve and expand
the existing maintenance shop. We feel that since this is a permitted use in the Intense Village Zone that it should
permitted in the Village Zone as well.


Applicant's Signature

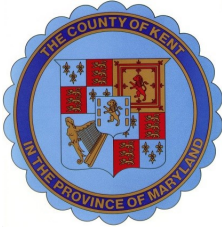
1/31/22
Date

Please Note: 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.

Instructions: The Land Use Ordinance requires that five (5) copies for Zoning Text Amendment be submitted to the Executive Assistant to the County Commissioners accompanied by \$500.00 filing fee, payable to the County Commissioners of Kent County.

For Office Use Only:

File Number _____
Date Filed _____
Date Referred to Planning Commission _____
Date Recommend. Rec'd from Plan. Comm. _____
County Comm. Public Hearing Date _____
County Commissioners Action _____
Date of Action _____
Property Posted _____



Bill Mackey, Director, Planning, Housing and Zoning
3/15/2022
County Commissioners Meeting

Item Summary:

The proposed Code Home Rule Bill would amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance, to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.5 *Density, Area, Height, Width, and Yard Requirements*, A. Standard Development, by removing the “Maximum percentage of property in lots” and “10%” and removing footnote #2.

Currently, the Land Use Ordinance requires that only 10% of the land area of properties zoned Agriculture Zoning District (AZD) may be subdivided for all parcels created after August 19, 2003, unless all parcels remain over 100 acres. This provision is intended to preserve farmland in large tracts in perpetuity. Because the density in AZD is regulated under a separate provision, density in AZD is not affected by the 10% rule.

On January 25, 2022, the Kent County Agriculture Advisory Commission reviewed the proposed legislation and recommended against the proposed amendment. The AAC supported continuation of the 10% rule with exemptions or waivers being provided for instances where roads, natural boundaries, historic preservation activities, and other cases create inequitable circumstances. The AAC recognizes that some flexibility is necessary, and an exemption or waiver process is a step towards a less restrictive regulation. A letter to the Planning Commission is attached.

On February 3, 2022, the Kent County Planning Commission held a public hearing, reviewed the proposed legislation, and tabled the item requesting more information. There were eleven members of the public who spoke in opposition.

On February 22, 2022, the County Commissioners asked for more information on the 10% rule in order to have a discussion on March 1. The County Commissioners requested that staff prepare examples of how the 10% rule could affect different kinds of property and a map of preserved agricultural land.

On March 1, 2022, the County Commissioners received the presentation from staff on the 10% rule. There were examples of a 100-acre and 200-acre farm with calculations provided, and examples of theoretical outcomes with and without the 10% rule. All examples were illustrative only. Written questions from the public were received, and the Commissioners discussed the materials presented.

On March 3, 2022, the Planning Commission received a similar presentation from staff on the 10% rule and also received public comment from nine members of the public who spoke in opposition. The Planning Commission voted to send an unfavorable recommendation to the County Commissioners. The Planning Commission’s letter is attached.

ATTACHMENTS:

Description

CHR Bill No. 4-2022 Removal of the 10% Rule from Agricultural Zoning District DRAFT Legislation

Letter from PC to CC re recommendation on 10% rule

Letter from AAC to Planning Commission

12.21.21 Resolution 2021-18, Resolution To Introduce a Text Amendment to Revise Chapter 222, Zoning,
To Remove the 10% Rule From AZD

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

March 15, 2022
Legislative Session Day

Legislative Session Day
March 15, 2022

CODE HOME RULE
BILL NO. 4-2022

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

AN ACT to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.5 *Density, Area, Height, Width, and Yard Requirements*, A. *Standard Development*, by removing the “Maximum percentage of property in lots” and “10%” and removing footnote #2.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, March 15, 2022, ordered posted and public hearing scheduled _____, 2022, at 10:00 a.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 [with] [without] amendments; read a second time and ordered to be considered on _____, 2022, a legislative session day.

**A BILL ENTITLED CHR 4-2022
REMOVAL OF THE 10% RULE FROM AGRICULTURAL ZONING DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 1. AGRICULTURAL ZONING DISTRICT

...

1.5 DENSITY, AREA, HEIGHT, WIDTH, AND YARD REQUIREMENTS

A. Standard Development

Gross <i>density</i> (dwelling units/acre)	0.033 (1/30) ^{1, 6}
Minimum <i>lot size</i>	
- <i>On-site</i> individual septic system	¾ acre
- Community system	½ acres
Minimum <i>lot width</i>	75 feet
Maximum percentage of property in lots	10%²
Maximum lots fronting on existing public road	2 ³

...

1 Accessory *dwelling units* do not count toward the *density* calculation.

~~2 Parcels 100 acres or larger do not count toward the maximum developed percentage of the property~~

RESERVED

3 Parcels created before the date of adoption of this Ordinance do not count toward the two permitted road front parcels. The Planning Commission may waive this requirement if the proposal meets the waiver requirements in Article IX, Section 3 of this Ordinance.

...

6 Agricultural Easement Program – Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with an easement to his or her child provided the easement was recorded with the Kent County Clerk of Circuit Court prior to October 1, 2003.

DRAFT

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, MARYLAND

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. 4-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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



Planning Commission
Department of Planning, Housing, and Zoning

March 3, 2022

The Honorable P. Thomas Mason, President
Kent County Board of County Commissioners
400 High Street
Chestertown, MD 21620

RE: Zoning Text Amendment related to the 10% rule

Dear President Mason:

At its March 3, 2022, meeting, the Kent County Planning Commission reviewed an application for the zoning text amendment to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.5 *Density, Area, Height, Width, and Yard Requirements*, A. *Standard Development*, by removing the "Maximum percentage of property in lots" and "10%" and removing footnote #2.

Following discussion, the Planning Commission voted to send an unfavorable recommendation to the County Commissioners on the proposed zoning text amendment, citing that a public need was not demonstrated, as there was a lack of positive feedback on the subject, that the proposal is inconsistent with the Comprehensive Plan, and that the Agricultural Advisory Commission was not in support of the proposal.

Sincerely,
Kent County Planning Commission

Joe Hickman
Chairman

cc: Shelley L. Heller, County Administrator



Kent County Agricultural Advisory Commission
Department of Planning, Housing, and Zoning
400 High Street, Suite 130
Chestertown, MD 21620
410-778-7423 (voice/relay)

January 25, 2022

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

RE: Zoning Text Amendment regarding the maximum percentage of property in lots (the 10% rule) within the Agricultural Zoning District (AZD)

Dear Mr. Hickman:

The Kent County Agriculture Advisory Commission has reviewed the proposed amendment to the *Kent County Land Use Ordinance* regarding Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.5 *Density, Area, Height, Width, and Yard Requirements*, A. *Standard Development*, by removing the “Maximum percentage of property in lots” and “10%” and removing footnote #2.

The AAC voted to recommend against the proposed amendment. The AAC supports the continuation of the 10% rule with exemptions or waivers being provided for instances where roads, natural boundaries, historic preservation activities, and other cases create inequitable circumstances. The AAC recognizes that some flexibility is necessary and an exemption or waiver process is a step towards a less restrictive regulation. The AAC members based the recommendation on the concern that potential fragmentation of AZD lands could negatively affect the current agricultural industry, considering the amount of prime farmland in AZD and the Comprehensive Plan’s goals to preserve resource lands in the County. The AAC members further expressed that there were too many unknowns associated with the proposal.

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

Sincerely,

Jennifer Debnam

Jennifer Debnam
Chair

RESOLUTION 2021-18

COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

A RESOLUTION TO INTRODUCE A TEXT AMENDMENT TO REVISE CHAPTER 222, ZONING, OF THE COUNTY CODE OF KENT COUNTY, MARYLAND, ALSO KNOWN AS THE KENT COUNTY LAND USE ORDINANCE BY REMOVING THE REQUIREMENT RELATED TO THE “MAXIMUM PERCENTAGE OF PROPERTY IN LOTS” (10% RULE) FROM THE AGRICULTURE ZONING DISTRICT.

WHEREAS, the Board of County Commissioners of Kent County, Maryland (the Board) may exercise its right to amend the County Code of Kent County, Maryland (the Code), by legislative action in the form of a Code Home Rule Bill to create an Act and thus propose text amendments to the Code; and

WHEREAS, in Article XII, *Administrative Procedures*, Section 6, *Amendments*, §1, the Land Use Ordinance states regarding the Board and the Code that “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...”; and

WHEREAS, the Board finds that removing the requirement limiting the “Maximum percentage of property in lots” (10% rule) in the Agriculture Zoning District is desirable to allow for flexibility in farm sizes; and

WHEREAS, the 2018 Comp Plan in the Countryside chapter, following a description of the 10% rule and subdivision limitations as the County’s historic approaches to protecting agriculture, makes it clear that diversification and new approaches are important elements in the Comp Plan; and

WHEREAS, since the goal is for agriculture, itself is to be preserved, not one particular type of agriculture, and limiting farm size is the current approach, it is therefore desirable that other approaches be entertained, if they promote the ability of existing and future farmers to diversify; and

WHEREAS, the 2018 Comp Plan goes on to state that “the County will review existing fees and regulations to evaluate whether or not they interfere with existing agricultural operations or the ability of farmers to diversify. The County is committed to taking a pro-active approach to investigating new opportunities to promote and maintain its strong agricultural industry (p. 42)”; and

WHEREAS, the Board determines that revising the Land Use Ordinance by removing said limiting provision serves to further the health, safety, and welfare of Kent County.

NOW, THEREFORE, BE IT RESOLVED that the Board on December 21, 2021, does hereby introduce the proposed text amendment, attached hereto as Exhibit A.

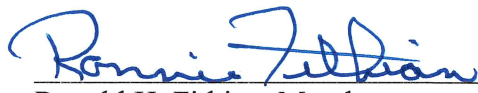
BE IT FURTHER RESOLVED that the Board refers the draft amendment for advisory review and recommendation to the Kent County Planning Commission and the Agriculture Advisory Commission.

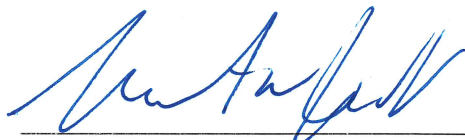
ATTEST:

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


Sondra M. Blackiston, Clerk


P. Thomas Mason, President


Ronald H. Fithian, Member


Robert N. Jacob, Jr., Member

ADOPTED: December 21, 2021

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 Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.5 *Density, Area, Height, Width, and Yard Requirements*, A. *Standard Development*, by removing the “Maximum percentage of property in lots” and “10%” and removing footnote #2.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, _____, 2022, ordered posted and public hearing scheduled _____, 2022, at X:00 a.m./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 [with] [without] amendments; read a second time and ordered to be considered on _____, 2022, a legislative session day.

**A BILL ENTITLED CHR X-2022
REMOVAL OF THE 10% RULE FROM AGRICULTURAL ZONING DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 1. AGRICULTURAL ZONING DISTRICT

...

1.5 DENSITY, AREA, HEIGHT, WIDTH, AND YARD REQUIREMENTS

A. Standard Development

Gross <i>density</i> (dwelling units/acre)	0.033 ^{1, 6} (1/30)
Minimum <i>lot</i> size	
- <i>On-site</i> individual septic system	¾ acre
- Community system	½ acres
Minimum <i>lot</i> width	75 feet
Maximum percentage of property in lots	10% ²
Maximum lots fronting on existing public road	2 ³

...

1 Accessory *dwelling units* do not count toward the *density* calculation.

2 ~~Parcels 100 acres or larger do not count toward the maximum developed percentage of the property~~

RESERVED

3 Parcels created before the date of adoption of this Ordinance do not count toward the two permitted road front parcels. The Planning Commission may waive this requirement if the proposal meets the waiver requirements in Article IX, Section 3 of this Ordinance.

BILL NO. X-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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

...

6 Agricultural Easement Program – Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with an easement to his or her child provided the easement was recorded with the Kent County Clerk of Circuit Court prior to October 1, 2003.

DRAFT

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

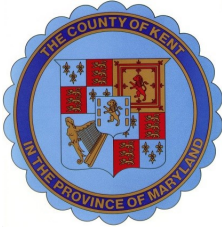
THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

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 Mackey, Director, Planning, Housing and Zoning
3/15/2022
County Commissioners Meeting

Item Summary:

The proposed Code Home Rule Bill would amend Chapter 222, Zoning, of the County Code of Kent County, Maryland, also known as the Kent County Land Use Ordinance, to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.2 *Permitted Principal Uses and Structures*, §12 related to poultry houses, waste management facilities, composters, and areas for the disposal of animals and §18 related to commercial stables; Section 1.4 *Accessory Uses and Structures*, A. §10.5 related to waste management structures; and Article VII, *Special Exceptions*, Section 7 *Special Exceptions*, §25 related to feedlots, §36 related to poultry houses under certain conditions, and §58 related to structures for animal products, by revising the required setbacks to 200 feet from the current setbacks of 600 feet and 400 feet.

Currently, the setbacks for waste management structures, poultry houses, feedlots, and various animal-related structures are 600 feet in AZD, while the setbacks for commercial stables are 400 feet in AZD. The proposed Code Home Rule Bill would reduce the current setbacks of 600 feet and 400 feet to standardized setbacks of no greater than 200 feet for most animal-related uses, except those adjacent to residential zoning districts, enclave and existing housing, and Town boundaries.

On January 25, 2022, the Kent County Agriculture Advisory Commission reviewed the proposed legislation and recommended to support the legislation as proposed. A letter to the Kent County Planning Commission is attached.

On February 3, 2022, the Kent County Planning Commission held a public hearing, reviewed the proposed legislation, and tabled the item requesting more information. There were four members of the public who spoke in opposition.

On March 3, 2022, the Kent County Planning Commission received a presentation from staff regarding setbacks and received public comment from three members of the public who spoke in opposition. The Kent County Planning Commission voted to send an unfavorable recommendation to the Kent County Commissioners. The Kent County Planning Commission's letter is attached.

ATTACHMENTS:

Description

CHR Bill No. 5-2022, Setbacks for Certain Animal-Related Uses in the Agricultural Zoning District DRAFT Legislation

Letter from AAC to Planning Commission

PC ltr to CC re ZTA for animal-related setbacks

12.21.21 Resolution 2021-19, Resolution To Introduce A Text Amendment to Revise Chapter 222, to Amend Setbacks for Certain Animal-Related Uses from 600 Feet and 400 Feet to 200 Feet in AZD

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

**March 15, 2022
Legislative Session Day**

**Legislative Session Day
March 15, 2022**

**CODE HOME RULE
BILL NO. 5-2022**

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

AN ACT to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.2 *Permitted Principal Uses and Structures*, §12 related to poultry houses, waste management facilities, composters, and areas for the disposal of animals and §18 related to commercial stables; Section 1.4 *Accessory Uses and Structures*, A. §10.5 related to waste management structures; and Article VII, *Special Exceptions*, Section 7 *Special Exceptions*, §25 related to feedlots, §36 related to poultry houses under certain conditions, and §58 related to structures for animal products, by revising the required setbacks to 200 feet from the current setbacks of 600 feet and 400 feet.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, March 15, 2022, ordered posted and public hearing scheduled _____, 2022, at 10:00 a.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 [with] [without] amendments; read a second time and ordered to be considered on _____, 2022, a legislative session day.

**A BILL ENTITLED CHR 5-2022
SETBACKS FOR CERTAIN ANIMAL-RELATED USES IN AGRICULTURAL
ZONING DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 1. AGRICULTURAL ZONING DISTRICT

...

1.2 PERMITTED PRINCIPAL USES AND STRUCTURES

...

12. Poultry houses provided:

a. Poultry houses, waste management facilities, composters, and the area for the disposal of animals shall be a minimum of 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from all **OTHER** property lines.

b. ...

...

18. Stable, commercial provided:

a. The *lot* is 20 acres or more.

b. Any *structure* for the keeping or feeding of animals and waste management *structures* shall be a minimum of 400 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from any **OTHER** property line.

...

1.4 ACCESSORY USES AND STRUCTURES

BILL NO. 5-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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

A. The following *accessory* uses are permitted on all *farms* in the agricultural zoning district.

...

10.5 Waste management *structures*, where not otherwise stipulated in this Ordinance, provided:

a. Waste management *structures* shall be a minimum of 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from all **OTHER** property lines.

b. . . .

...

ARTICLE VII.

SPECIAL EXCEPTIONS

...

SECTION 7. SPECIAL EXCEPTIONS

...

25. ~~Feedlot or confinement dairy~~ in AZD provided:

a. All *buildings*, corals, and waste management *structures* are 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from the nearest ~~ANY OTHER~~ property line.

b. . . .

...

36. Poultry houses on parcels where the owner cannot handle the waste generated by the poultry houses in AZD provided:

a. All *buildings* and waste management *structures* are 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXSITING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from the nearest ~~ANY OTHER~~ property line.

b. . . .

. . .

58. *Structures* for the buying, processing, and sale of animal products in AZD, commercial, provided:

a. *Structures*, retention, and disposal areas shall be 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from the nearest ~~ANY OTHER~~ property line.

b. . . .

DRAFT

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, MARYLAND

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. 5-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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



Kent County Agricultural Advisory Commission
Department of Planning, Housing, and Zoning
400 High Street, Suite 130
Chestertown, MD 21620
410-778-7423 (voice/relay)

January 25, 2022

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

RE: Zoning Text Amendment regarding revising setbacks for certain animal-related uses from 600 feet and 400 feet to 200 feet in Agricultural Zoning District.

Dear Mr. Hickman:

The Kent County Agriculture Advisory Commission has reviewed the proposed amendment to the *Kent County Land Use Ordinance* regarding Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.2 *Permitted Principal Uses and Structures*, §12 related to poultry houses, waste management facilities, composters, and areas for the disposal of animals and §18 related to commercial stables; Section 1.4 *Accessory Uses and Structures*, A. §10.5 related to waste management structures; and Article VII, *Special Exceptions*, Section 7 *Special Exceptions*, §25 related to feedlots, §36 related to poultry houses under certain conditions, and §58 related to structures for animal products, by revising the required setbacks to 200 feet, under certain circumstances, from the current setbacks of 600 feet and 400 feet.

The AAC voted to recommend supporting the legislation as proposed.

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

Sincerely,

Jennifer Debnam

Jennifer Debnam
Chair



Planning Commission
Department of Planning, Housing, and Zoning

March 3, 2022

The Honorable P. Thomas Mason, President
Kent County Board of County Commissioners
400 High Street
Chestertown, MD 21620

RE: Zoning Text Amendment regarding animal-related setbacks in AZD

Dear President Mason:

At its March 3, 2022, meeting, the Kent County Planning Commission reviewed an application for the zoning text amendment to amend Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.2 *Permitted Principal Uses and Structures*, §12 related to poultry houses, waste management facilities, composters, and areas for the disposal of animals and §18 related to commercial stables; Section 1.4 *Accessory Uses and Structures*, A. §10.5 related to waste management structures; and Article VII, *Special Exceptions*, Section 7 *Special Exceptions*, §25 related to feedlots, §36 related to poultry houses under certain conditions, and §58 related to structures for animal products, by revising the required setbacks to 200 feet from the current setbacks of 600 feet and 400 feet.

Following discussion, the Planning Commission voted to send an unfavorable recommendation to the County Commissioners on the proposed zoning text amendment, citing that a public need was not demonstrated, that the Comprehensive Plan states reasonable restrictions are needed for animal uses near residential, and although the Agricultural Advisory Commission had recommended approval, the issue of individual rural residences and unimproved residential lots in AZD, which are currently existing, has not been fully addressed.

Sincerely,
Kent County Planning Commission

Joe Hickman
Chairman

cc: Shelley L. Heller, County Administrator

RESOLUTION 2021-19

COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

A RESOLUTION TO INTRODUCE A TEXT AMENDMENT TO REVISE CHAPTER 222, ZONING, OF THE COUNTY CODE OF KENT COUNTY, MARYLAND, ALSO KNOWN AS THE KENT COUNTY LAND USE ORDINANCE TO AMEND SETBACKS FOR CERTAIN ANIMAL-RELATED USES FROM 600 FEET AND 400 FEET TO 200 FEET IN AGRICULTURAL ZONING DISTRICT.

WHEREAS, the Board of County Commissioners of Kent County, Maryland (the Board) may exercise its right to amend the County Code of Kent County, Maryland (the Code), by legislative action in the form of a Code Home Rule Bill to create an Act and thus propose text amendments to the Code; and

WHEREAS, in Article XII, *Administrative Procedures*, Section 6, *Amendments*, §1, the Land Use Ordinance states regarding the Board and the Code that “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...”; and

WHEREAS, the Board finds that the current setbacks for waste management structures, poultry houses, feedlots, and various animal-related structures are 600 feet in the Agricultural Zoning District; and

WHEREAS, the Board finds that the current setbacks for commercial stables are 400 feet in the Agricultural Zoning District; and

WHEREAS, the Board finds the current setbacks of 600 feet and 400 feet are too restrictive in the Agricultural Zoning District, where such agricultural uses should be expected; and

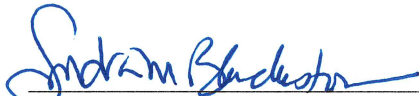
WHEREAS, the Board determines that including standardized setbacks of no greater than 200 feet for most animal-related uses in the Agricultural Zoning District serves to further the health, safety, and welfare of Kent County.

NOW, THEREFORE, BE IT RESOLVED that the Board on December 21, 2021, does hereby introduce the proposed text amendment, attached hereto as Exhibit A.

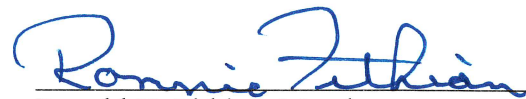
BE IT FURTHER RESOLVED that the Board refers the draft amendment for advisory review and recommendation to the Kent County Planning Commission and Agriculture Advisory Commission.

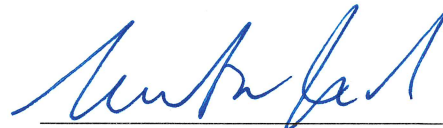
ATTEST:

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


Sondra M. Blackiston, Clerk


P. Thomas Mason, President


Ronald H. Fithian, Member


Robert N. Jacob, Jr., Member

ADOPTED: December 21, 2021

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 Article V, *District Regulations*, Section 1, *Agricultural Zoning District*, Section 1.2 *Permitted Principal Uses and Structures*, §12 related to poultry houses, waste management facilities, composters, and areas for the disposal of animals and §18 related to commercial stables; Section 1.4 *Accessory Uses and Structures*, A. §10.5 related to waste management structures; and Article VII, *Special Exceptions*, Section 7 *Special Exceptions*, §25 related to feedlots, §36 related to poultry houses under certain conditions, and §58 related to structures for animal products, by revising the required setbacks to 200 feet from the current setbacks of 600 feet and 400 feet.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, _____, 2022, ordered posted and public hearing scheduled _____, 2022, at X:00 a.m./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
SETBACKS FOR CERTAIN ANIMAL-RELATED USES IN AGRICULTURAL
ZONING DISTRICT**

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 V.

DISTRICT REGULATIONS

...

SECTION 1. AGRICULTURAL ZONING DISTRICT

...

1.2 PERMITTED PRINCIPAL USES AND STRUCTURES

...

12. Poultry houses provided:

a. Poultry houses, waste management facilities, composters, and the area for the disposal of animals shall be a minimum of 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from all **OTHER** property lines.

b. ...

...

18. Stable, commercial provided:

a. The *lot* is 20 acres or more.

b. Any *structure* for the keeping or feeding of animals and waste management *structures* shall be a minimum of 400 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from any **OTHER** property line.

...

1.4 ACCESSORY USES AND STRUCTURES

BILL NO. X-2022

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW.

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

- A. The following *accessory* uses are permitted on all *farms* in the agricultural zoning district.

...

10.5 Waste management *structures*, where not otherwise stipulated in this Ordinance, provided:

a. Waste management *structures* shall be a minimum of 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from all **OTHER** property lines.

b. ...

...

ARTICLE VII.

SPECIAL EXCEPTIONS

...

SECTION 7. SPECIAL EXCEPTIONS

...

25. *Feedlot* or confinement dairy in AZD provided:

a. All *buildings*, corals, and waste management *structures* are 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from the nearest **ANY OTHER** property line.

b. ...

...

36. Poultry houses on parcels where the owner cannot handle the waste generated by the poultry houses in AZD provided:

a. All *buildings* and waste management *structures* are 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXSITING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from the nearest **ANY OTHER** property line.

b. . . .

. . . .

58. *Structures* for the buying, processing, and sale of animal products in AZD, commercial, provided:

a. *Structures*, retention, and disposal areas shall be 600 feet **FROM RESIDENTIALLY ZONED PROPERTIES (RC, RR, CAR, CR, V, IV, IVCA), ENCLAVE AND EXISTING HOUSING DEVELOPMENTS, AND TOWN BOUNDARIES; AND A MINIMUM OF 200 FEET** from ~~the nearest~~ **ANY OTHER** property line.

b. . . .

DRAFT

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

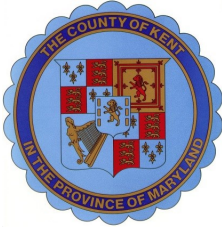
THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

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.



Morgnec Road Solar, LLC Case No. 9499
3/15/2022
County Commissioners Meeting

Item Summary:

Update

ATTACHMENTS:

Description

Before the Public Service Commission of Maryland, Morgnec Solar, LLC Case No. 9499, Reply Memorandum of the Staff of the Maryland Public Service Commission

Frederick Hoover, Assistant People's Counsel, PSC Case No. 9499, Response Memorandum

Sondra McLemore, Assistant Attorney General, PSC Case No. 9499, Post-Hearing Brief of Dept Natural Resources, Power Plant Research Program

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

In the Matter of the Application of Morgnec Road
Solar, LLC for a Certificate of Public
Convenience and Necessity to Construct a
45.0 Solar Voltaic Generating Station
in Kent County, Maryland

Case No. 9499

REPLY MEMORANDUM OF THE STAFF OF THE
MARYLAND PUBLIC SERVICE COMMISSION

The Staff of the Public Service Commission submits this Reply Memorandum in response to the Memoranda on Appeal that were filed separately by (1) Kent County, and (2) the Kent Conservation and Preservation Alliance (“KCPA”). Both the County and KCPA challenge the January 7, 2022 Proposed Order that determined that the Commission should grant authorization (in the form of a Certificate of Public Convenience and Necessity (“CPCN”)) for Morgnec Road Solar, LLC (“Morgnec”) to construct a 45.0 megawatt (“MW”) solar photo-voltaic generating facility (“the Project”) in Kent County (Mail Log (“ML”) 238465). For the reasons discussed below, the Commission should affirm the Proposed Order and authorize Morgnec to construct the solar project.

I. PREEMPTION OF KENT COUNTY’S ZONING LAW IS JUSTIFIED

A “majority of the Clark Farm”, which is the site of the Project, “is zoned RR [Rural Residential] and CR [Community Residential].”¹ Significant here is that Kent County’s zoning

¹ Applicant Exh. 32, Attachment D, page 41, lines 2-8 (“P41, L2-8”)(Stevens Direct Testimony (“Stevens Direct”)). This Attachment D includes the transcript of December 6, 2018 hearing at which the Kent County Planning Commission rejected Morgnec’s request for (1) a change in the Kent County Land Use Ordinance to allow utility-scale solar projects the Rural Residential and the Community Residential Districts (Transcript, pp. 1-33), and (2) a variance to allow Morgnec to use the Clark Farm site (Transcript, pp. 34-106).

law bars solar projects in both the RR district and the CR district.² The fact that the Project violates the County's zoning law does not preclude the Commission from authorizing the Project. Section 7-207(e) of the Public Utilities Article ("PUA") of the Annotated Code of Maryland requires the Commission, in evaluating whether to authorize a proposed generating station, to give "due consideration" to the "recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station . . . is proposed to be located." The Commission must also consider "the consistency of the [CPCN] application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located." (PUA 7-207(e)(3)(i)). In its 2019 decision in *Board of County Commissioners of Washington County, Maryland v. Perennial Solar, Inc.* ("Perennial")³, the Maryland Court of Appeals determined that its finding in its 1990 decision in *Howard County v. Potomac Electric Power Co.* ("Howard")⁴ that a CPCN issued by the Commission under PUA 7-207(b)(1) preempts a local government's land use law, which includes zoning law, applies with full force to a solar generating station that the Commission has authorized via a CPCN. *Perennial* involved a situation where the Washington County Board of Zoning Appeals ("BZA") granted a variance of the County's zoning law to allow Perennial Solar, LLC ("Perennial") to construct an 8.0 MW Solar Energy Generating System ("SEGS") in Washington County, Maryland. In rejecting an appeal of the BZA's decision by Washington County and nearby landowners, the Maryland Court of Appeals observed that "[t]his case involves the intersection of the State's efforts to promote solar electric

² Applicant Exh. 32, P4, L2-3 (Stevens Direct); PPRP Exh. 1, P4:21-P5:10 (Sadzinski Direct).

³ *Washington County Board of County Commissioners v. Perennial Solar, LLC* ("Perennial"), 464 Md. 610, 626-627, 212 A.3d 868, 877-878 (2019).

⁴ *Howard County v. Potomac Electric Power Co.*, 319 Md. 511, 573 A.2d 821 (1990).

generation as part of its renewable energy policies, and local governments' interest in ensuring compliance with local planning and zoning prerogatives.” (464 Md. at 612). The court recognized that the Commission’s exclusive jurisdiction over generating stations is necessary to achieve Maryland’s aggressive renewable energy goals. The Maryland General Assembly adopted the RPS requirements in 2004 by enacting PUA 7-701 through 7-713. The RPS law stems from the General Assembly’s finding that there are important benefits associated with renewable energy, “including long term decreased emissions, a healthier environment, increased energy security and decreased reliance on a vulnerability from imported energy sources accrue to the public at large.” (PUA 7-702(b)). Thus, the General Assembly determined that Maryland needs to “develop a minimum level of these [renewable] resources in the electricity supply portfolio of the State.” (PUA 7-702(b)). As a result, the RPS requires entities that serve electric load in Maryland, such as utilities and electricity suppliers (collectively referred to as Load Serving Entities (“LSE’s”)) to (1) utilize renewable resources to serve at least a specified percentage of the LSE’s load, or (2) pay an alternative compliance fee. Moreover, the *Perennial* court noted that these vital benefits of renewable energy led the General Assembly in 2019 to “adopt[] the Clean Energy Jobs Act”, which significantly increased the RPS renewable energy requirement (SB 516, which is referred to here as the Revised RPS law, and is codified at PUA 7-203(b)). The Revised RPS law requires utilities and electricity suppliers to rely on renewable energy for 25% of their load. As part of this 25% renewable requirement, utilities and suppliers must rely on solar for 7.5% of load (the so-called solar carve-out). The Revised RPS law requires LSE’s to rely on Tier 1 renewable energy (which includes solar energy) for at least 50% of total demand by the year 2030, with at least 14.5% of the supply from solar energy. The 14.5% solar carve-out begins in 2028 (PUA 7-703(b)(23)(i)), and this solar generation must be

provided from generation “connected with the electric distribution grid serving Maryland.” (PUA 7-704(a)(2)(i)). As a practical matter, this means that, in order to satisfy the 14.5% carve-out, a supplier must rely on purchasing Renewable Energy Credits (“REC’s”) or electricity from a solar project (1) in Maryland, or (2) in a geographic area that is immediately adjacent to Maryland that can deliver electricity into the Maryland distribution grid if the solar project executes a power supply contract with an electricity supplier that serves retail load in Maryland.⁵ The *Perennial* court observed that “The General Assembly has delegated to the PSC the authority to ‘implement a renewable portfolio standard that applies to retail electricity sales in the State by electricity suppliers consistent with the specific timetable established by the statute. PU[A] § 7-703(a).” (464 Md. at 622-623). The court also noted that Maryland’s commitment to renewable energy was underscored by enactment in 2009 of “the Greenhouse Gas Emissions Reduction Act of 2009 (“GRRRA”) [which is] a law that requires the State to reduce greenhouse gas emissions from a 2006 baseline by 25% by 2020 and by 40% by 2030.” (464 Md. at 622).

The *Perennial* court recognized that PUA 7-207(e)(1) requires the Commission, in evaluating whether to authorize a proposed solar project, to give “due consideration” to the “recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station . . . is proposed to be located.” But the *Perennial* court emphasized that “[a]lthough the local governing body's recommendations are contemplated with ‘due consideration’, the final determination whether to approve a CPCN for SEGS is ultimately made by the PSC.” (464 Md. at 633). Likewise, the *Perennial* court noted that “it is clear that the General Assembly intended to vest final authority with the PSC for the siting and location of generating stations requiring a CPCN.” (464 Md. at 631).

⁵ See Sept. 17, 2015 Commission Order in ML 170952.

Maryland’s commitment to renewable energy, and the resulting importance of preemption of local zoning to ensure adequate solar generating capacity in Maryland, is highlighted by a law enacted after the 2019 *Perennial* decision. House Bill 298/Senate Bill 83 (referred to as “HB 298” or the 2021 Greenhouse Gas law) requires the Commission, in evaluating a request for authorization to construct a generating station, to consider:

1. the impact of the generating station on the quantity of annual and long-term statewide greenhouse gas emissions, measured in the manner specified in section 2-1202 of the Environment Article and based on the best available scientific information recognized by the Intergovernmental Panel on climate change [PUA 7-207(E)(4)(iii), as modified by HB 298]; and
2. the consistency of the application with the State’s climate commitments for reducing statewide greenhouse gas emissions, including those specified in Title 2, subtitle 2 of the Environment Article [PUA § 7-207(e)(4)(iv), as modified by HB 298]

Maryland’s commitment to renewable energy is also reflected an Executive Order that was issued by Governor Hogan on September 6, 2019 that points out that “efforts are underway [in Maryland] to meet ambitious goals to reduce greenhouse gas emissions by 40 percent by 2030, and to achieve 100-percent clean electricity by 2040.” (Executive Order 01.01.2019 .09). The Executive Order observes that “the State must work aggressively to diversify, expand, and sustain its clean and renewable energy capabilities while balancing, enhancing, and safeguarding Maryland's cultural heritage, economy, environment, natural resources, and view-sheds.”

In order to satisfy its statutory duty to facilitate the development of additional solar generating capacity in Maryland to satisfy Maryland’s renewable energy goals, including the RPS 14.5% solar carve-out, the Commission has repeatedly authorized solar projects that are inconsistent with County zoning law and that are opposed by the County or other local government. For example, in 2020, the Commission authorized the 15.0 MW solar project proposed by Biggs Ford Solar, LLC (“Biggs”), even though (1) the project violated Frederick

County’s zoning law and Comprehensive Plan, and (2) Frederick County rejected the project’s request for a zoning variance.⁶ The Commission cited the finding in the Proposed Order that large-scale solar projects in Maryland are needed to satisfy the RPS solar carve-out of 14.5%: “In order to meet the 14.5% solar carve-out by 2020, large solar facilities must continue to be part of the equation in order to meet the RPS’s goal as rooftop solar installations alone are not sufficient.”⁷ Likewise, in its decision on remand after the *Perennial* court reaffirmed that a CPCN preempts zoning law, the Commission recognized that preemption of Washington County’s zoning law was necessary to achieve Maryland’s renewable energy goals.⁸ The Commission acknowledged (Para. 46) that Maryland law declares that “It is the policy of the State that planning and zoning controls shall be implemented by local government.” (citing Md. Code, Local Government Article, §10-324(a)(2)). But the Commission noted that Washington County’s “contention that the County’s special exception approach to solar energy land use regulation demands a rejection of the Application is contrary to the holding in *Perennial* ...” (Para. 51). The Commission observed that Maryland law “precludes [Washington County’s] argument by its express terms.” (Para. 51, n. 40). The Commission acknowledged that PUA 7-207(e)(3) “requires that the Commission give due consideration to ... the consistency of the

⁶ *In the Matter of the Application of Biggs Ford Solar Center, LLC For a Certificate of Public Convenience and Necessity to Construct a 15.0 MW Solar Photovoltaic Generating Facility in Frederick County, Maryland*, Case No. 9439, Order No. 89668, P44 (Nov. 24, 2020)(ML 232718). On June 8, 2021, the Baltimore City Circuit Court rejected Frederick County’s appeal of the Commission decision that authorized the Biggs project (Cause No. 24-C-20-005110). Frederick County then filed in the Court of Special Appeals an appeal of the Circuit Court’s decision.

⁷ *Biggs*, Case No. 9439, Order No. 89668, Para. 41. As noted, the 14.5% solar carve-out begins in 2028 (PUA 7-703(b)(23)(i)).

⁸ *In the Matter of the Application of Perennial Solar LLC For a Certificate of Public Convenience and Necessity to Construct an 8.0 MW Solar Photovoltaic Generating Facility in Washington County, Maryland*, Case No. 9408, Order No. 89938 (Sept. 7, 2021)(ML 237066).

[CPCN] application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located.” (Para. 67). But the Commission noted that PUA 7-207(e)(3) “does not require a finding that a proposed generating station be consistent with the local county’s plan. To do so would provide a veto right to local government planning, in contravention of State preemption analysis” (Para. 67). The Commission pointed out that it “is required to give due consideration, not deference, to the applicable [Comprehensive Plan] and zoning pursuant to PUA § 7-207(e)(3)(i).” (Para. 67). The Commission observed that this means that Washington County’s “argument that the Project is inconsistent with the County’s Comprehensive Plan as a matter of law, even if correct, is nonetheless unavailing because of preemption.” (Para. 67).

In their appeals, neither Kent County nor KCPA try to reconcile (1) their assertion that the Commission should reject the Morgnec project because the project does not comply with the County’s zoning law, and (2) the Commission’s decision to preempt zoning in *Biggs* and *Perennial* to achieve Maryland’s renewable energy goals. The County asserts (p. 5) that “introducing a 253-acre solar array to Kent County will not improve air quality and will not take the place of an illusory coal or natural gas generating plant” But the County overlooks the Commission’s recognition that “In order to meet the 14.5% solar carve-out by 2020, large solar facilities must continue to be part of the equation in order to meet the RPS’s goal”⁹ Morgnec’s 45 MW capacity will make a significant contribution to achieving Maryland’s goal of 50% renewable energy by 2030, along with achieving the 14.5 percent solar carve-out by 2028. The Power Plant Research Program (“PPRP”) “estimated that the proposed project would

⁹ *Biggs*, Case No. 9439, Order No. 89668, Para. 41. As noted, the 14.5% solar carve-out begins in 2028 (PUA 7-703(b)(23)(i)).

contribute 2 percent of the total solar energy generation necessary to attain the goal for solar power generating in-state during its first year of operation.”¹⁰ Morgnec will also advance the goals of the 2021 Greenhouse Gas law that requires the Commission to evaluate the impact of a proposed generating station on greenhouse gases and climate change. The project “will reduce yearly CO2 emissions from imported electricity from the PJM area by approximately 1,912 tons and by approximately 57,382 tons over a 30-year Project life.”¹¹ The Commission has recognized that, due to the availability of farmland on the Eastern Shore for (which is where the Morgnec project is located) and Western Maryland for solar projects, “the vast majority of solar development [in Maryland] has been on farmland located on the Eastern Shore and Western Maryland.”¹² The need for utility-scale solar projects, such as Morgnec, is underscored by the fact that renewable generation in Maryland is “lagging behind” the amount of renewable generation that is needed to satisfy the RPS requirements (KCPA, p. 3).

In their appeals of the Proposed Order, Kent (p. 4) and KCPA (p. 6) assert that authorization of the Project is inappropriate because “approximately 75% of the soils on the property” are “prime farmland” pursuant to the regulations of the U.S. Department of Agriculture (7 CFR 657.5). But Morgnec demonstrated that the quality of the soil on the project site is “very marginal” and, therefore, is of lower quality than that required for designation as

¹⁰ PPRP Exh. 12 P10, L1-18 (Sadzinski Supplemental Direct).

¹¹ Applicant Exh. 26, P6, L15-18 (Bauer Supplemental Direct), as corrected by Mr. Bauer during the evidentiary hearing (Transcript, page 237, line 19 to page 238, line 19 (“P237, L19 to P238, L19”)(Nov. 8, 2021).

¹² *In the Matter of the Application of PTR Holdco, LLC For a Certificate of Public Convenience and Necessity to Construct a 30.0 MW Solar Photovoltaic Generating Facility in Harford County, Maryland*, Case No. 9652, Proposed Order, Para. 19 (ML 235914), affirmed in Order No. 89890 (Sept. 7, 2021)(ML 236297).

“prime farmland”.¹³ Kent County (p. 4) and KCPA (p. 4) mention, but do not rebut, Morgnec’s argument. Even putting this aside, the fact that a project is wholly or partially located on “prime farmland” is just one of the many factors that the Commission must evaluate in determining whether a proposed solar project is in the public interest.¹⁴ The County also asserts (pp. 8-9) that that the project would “usurp[e] the intended growth patterns envisioned by Kent County and the Town of Chestertown.” However, in its December 3, 2022 brief in this proceeding (pp. 20-22), Staff explained why the current growth patterns in Chestertown and Kent County indicate that it is unlikely that the Project site will be needed for residential or commercial growth in the near future.¹⁵ It also bears emphasis that if the Commission authorizes construction of the Project, the Project must still comply with many of the County’s land use policies, as discussed below in connection with the settlement negotiated by Morgnec and PPRP, which was approved in the Proposed Order (Para. 42).

In its 2020 decision that authorized the Biggs solar project, the Commission determined preemption of the Frederick County zoning law was necessary because the zoning law “created an unacceptable hurdle to complying with Maryland’s RPS.”¹⁶ For the four reasons discussed below, Kent County’s zoning law, like the Frederick County zoning law at issue in *Biggs*, imposes an unreasonable restriction on solar projects and, hence, “creates an unacceptable hurdle

¹³ Applicant Exh. 23, P4, L11-14 (Hall Direct); see P2, L5-P4, L2 (Hall Direct); Applicant Exh. 8, P5, L7-16 and P6, L7-23, and P7, L1 to P9, L5 (Williams Direct); PO at Para. 56..

¹⁴ Case No. 9439, Proposed Order, Para. 55-56; 202 (Aug. 27, 2020)(ML 231631), affirmed in Order No. 89668; see also Case No. 9457, Order No. 89069, pp. 49, 59-60 (Jan. 15, 2020)(ML 224352)(in authorizing a solar project, despite the argument by nearby residents that the Commission should reject the project because it would be on prime farmland, the Commission noted that PPRP asserted that “the Site’s designation as prime farmland did not restrict a utility-scale solar facility from being built and did not impact PPRP’s evaluation”).

¹⁵ Applicant Exh. 33, P3, L4-7 (Stevens Rebuttal); see Applicant Exh. 32, P10, L20-P11, L2 (Stevens Direct); PPRP Exh. 1, P19, L3-8 (Sadzinski Direct Testimony).

¹⁶ *Biggs*, Case No. 9439, Order No. 89668, Para. 45.

to complying with Maryland’s RPS.” This underscores the need for preemption of the Kent County zoning law. First, as noted, a “majority of the Clark Farm is zoned RR [Rural Residential] and CR [Community Residential]”¹⁷ but Kent County’s zoning law bans solar projects in both the RR district and the CR district.¹⁸ Second, in those areas where the Kent County zoning law allows utility-scale solar, there are only ten land parcels that have sufficient acreage to support utility-scale solar and are near the electric distribution system:

Only 10 unoccupied parcels zoned for solar PV have developable acreage that can support a 10 MW ac or larger solar project, the largest (near Galenda) with developable capacity of 31 MWac. All of these are within one-half mile of a 24.5 kv or one mile of a 69 kv circuit.¹⁹

This indicates that Kent County’s solar zoning is too restrictive. Morgnec observes that the site it selected for the project is suitable because the existing “Chestertown substation and the surrounding infrastructure at the time of Urban Grid’s interconnection application had capacity to accept the injection of this new generation for a cost that was reasonable for [the project’s] size.”²⁰ The ability of a project to deliver its generation into a nearby distribution grid is essential to ensure that the project is financially viable.²¹ Likewise, Morgnec determined that there are four or fewer locations, in total, in the Rural Residential District and the Rural Residential District that are viable for utility-scale solar.²² This highlights that Kent County’s 5-

¹⁷ Applicant Exh. 32, Attachment D, P41, L2-8 (Stevens Direct). This Attachment D includes the transcript of December 6, 2018 hearing at which the Kent County Planning Commission rejected Morgnec’s request for (1) a change in the Kent County Land Use Ordinance to allow utility-scale solar projects the Rural Residential and the Community Residential Districts (pp. 1-33), and (2) a variance to allow the Morgnec project to use the Clark Farm site (transcript, 34-106).

¹⁸ Applicant Exh. 32, P4, L2-3 (Stevens Direct).

¹⁹ (emphasis not in original) PPRP Exh. 16, P4, L2-11 (Hall Reply Testimony).

²⁰ Applicant Exh. 29, P11, L16-18 (Thompson Direct).

²¹ Applicant Exh. 29, P3, L8-13 (Thompson Direct).

²² Applicant Exh. 32, Attachment D, P55, L12-P56, L3 and P74, L10-P76, L20 (Stevens Direct).

acre cap on solar projects in the Rural Residential District and the Rural Residential District is too restrictive. Third, although utility-scale solar is allowed via a variance (a so-called Special Exception) in the Agricultural Zoning District (“AZD”), and in the Resource Conservation District (“RCD”), “such utility-scale solar systems in AZD and Resource Conservation District are limited to 5 acres.”²³ The acreage of the Agricultural Zoning District (117,643 acres), and the Resource Conservation District (37,153 acres) constitutes 97.9% of the total acreage in Kent County where utility-scale solar is allowed.²⁴ Thus, the 5-acre cap applies to virtually all solar projects in Kent County. The 5-acre cap is totally at odds with the Commission’s recognition that, “In order to meet the 14.5% solar carve-out by 2020, large solar facilities must continue to be part of the equation in order to meet the RPS’s goal”²⁵ Fourth, there are “only two parcels in Kent County are zoned for using the applicant’s 20+ MWac benchmark [for a utility-scale solar project], and no parcel can accommodate a 45MWac solar PV facility, as has been proposed in this case.”²⁶ Siting Morgnec’s 45 MW of solar capacity among two or more parcels “would likely change the financial fundamentals of the project” and, hence, might mean that the project would not be viable.²⁷ The four factors discussed above indicate that Kent County’s zoning law are unreasonable and “imposes an unacceptable hurdle to complying with Maryland’s RPS.”²⁸ This is an additional reason for the preemption of Kent County’s zoning law.

²³ Kent County Exh. 3, P5-6 (Mackey Direct).

²⁴ Kent County Exh. 3, P6 (Mackey Direct).

²⁵ *Biggs*, Case No. 9439, Order No. 89668, Para. 41.

²⁵ *Biggs*, Case No. 9439, Order No. 89668, Para. 41.

²⁶ PPRP Exh. 16, P4:12-16 (Hall Reply Testimony).

²⁷ PPRP Exh. 16, P4:12-16 (Hall Reply Testimony).

²⁸ *Biggs*, Case No. 9439, Order No. 89668, Para. 45.

II. MORGNEC HAS MADE A GOOD FAITH EFFORT TO ADDRESS THE COUNTY'S CONCERNS

PUA 7-207(e)(3)(i) requires the Commission to consider “the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.” (PUA 7-207(e)(3)). Morgnec has acted in good faith to address Kent County’s concerns. Kent County and KCPA declined the invitation from Morgnec and PPRP to participate in negotiations to resolve issues associated with the project.²⁹ The October 2021 settlement negotiated by Morgnec and PPRP requires Morgnec to “comply with all standards and requirements” of the law enacted by Kent County on February 16, 2021 (referred to as Code Home Rule Bill No. 7-2020 (“CHR 7-2020”), and referred to here as Kent County’s 2021 solar law).³⁰ The 2021 solar law “implements countywide standards for utility-scale solar energy systems in Kent County.”³¹ These standards include a requirement that a solar project be no closer than a specified distance from any lot line, road, right-of-way, or residential use or zoning district.³² The settlement also requires that, prior to the start of construction, Morgnec must “certify to the PSC ... that [Morgnec] has designed the facility in substantial conformity to Kent County Site Plan requirements” as established in County law.³³ The 2021 solar law adopts recommendations by KCPA, including in connection with the visual screening required to

²⁹ Transcript P589, L5-P590, L15 and P649, L21-P654, L1 (cross-exam of KCPA witness Christenson-Lewis)(Nov. 10, 2021); Transcript P653, L2-P654, L2 (cross-exam of County witness Shelley Heller)(Nov. 10, 2021); PPRP Exh. 20.

³⁰ Applicant Exh. 12 (Oct. 1, 2021 “Joint Motion for Approval of Agreement of Stipulation and Settlement” (ML 237256)). The text of the settlement is in Appendix A of Applicant Exh. 12.

³¹ Applicant Exh. 12, pp. 2 and 3. The text of CHR 7-2020 is in Appendix B of Applicant Exh. 12.

³² Applicant Exh. 12, Appendix B, p. 2.

³³ Applicant Exh. 12, Appendix. A, p. 5, §16.

mitigate the visibility of the solar panels from outside the project's site.³⁴ Also, the settlement removes any uncertainty about the applicability of the 2021 solar law to the project. In addition, Morgnec agrees as part of the settlement to "comply with and agrees to be bound by all standards and requirements of CHR 7-2020 regardless of any judicial decision invalidating or rendering unenforceable the Ordinance or similar local solar siting law in Maryland."³⁵ In view of the risk that a solar developer might challenge the 2021 solar law, this agreement by Morgnec to comply with the requirements in the law provides important protections for Kent County.

The settlement also addresses the concern expressed by KCPA that "the lack of certainty regarding decommissioning could have hindered future planning" by Kent County and Chestertown regarding the project site.³⁶ The settlement requires the decommissioning of the Project within "30 years from the commercial operations date or 34 years from the date of CPCN issuance (defined as receipt of a final unappealable Commission Order), whichever is sooner, unless extended by the County."³⁷ Hence, a key benefit that Chestertown and Kent County will reap from the settlement is that the settlement gives the County the right to veto any attempt by Morgnec to extend the life of the project. If the County opposes a proposal by Morgnec to extend the life of the Project, the site would "be once again available for agricultural use or residential development after decommissioning."³⁸ This means that the settlement "would allow for the future development contemplated in the local jurisdictions' comprehensive plans,

³⁴ Transcript, P598, L21-P599, L20 (cross-examination of KCPA witness Christenson-Lewis)(Nov. 10, 2021).

³⁵ Applicant Exh. 12, Exh. A, p. 4, §II(4)).

³⁶ PPRP Exh. 12, P6, L19-20 (Sadzinski Supplemental Direct).

³⁷ Applicant Exh. 12, Exh. A, p. 3, §II(2)).

³⁸ Applicant Exh. 24, P5, L18-19 (Bauer Direct).

while also allowing the project to operate ... , thereby contributing to the State’s renewable energy goals.”³⁹

The settlement also ensures that Morgnec adopts a satisfactory plan for decommissioning. The settlement states that “The Applicant shall receive Commission approval of the Project’s decommissioning plan pursuant to PPRP’s decommissioning condition prior to the commencement of construction of the Project.”⁴⁰ To ensure that there are adequate funds to decommission the project, Morgnec must “implement a financial mechanism to ensure that decommissioning costs are not borne by the State and/or the County at the end of the useful life of the project or in the event of abandonment of the project.”⁴¹ Thus, the settlement’s cap on the number of years that the project can operate, along with the duty imposed by the settlement on Morgnec to maintain a bond to ensure that there are adequate funds to decommission the project, guarantees that the project site will be available for development by Kent County or Chestertown when the project terminates operations.

For the reasons discussed above, the Commission should affirm the Proposed Order and authorize Morgnec to construct its solar project.

Kenneth Marc Albert
Assistant Staff Counsel
Public Service Commission
of Maryland
6 St. Paul Street, 17th Floor
Baltimore, Maryland 21202-6806

March 8, 2022

³⁹ PPRP Exh. 12, P2, L15-17 (Sadzinski Supplemental Direct).

⁴⁰ Applicant Exh. 12, Exhibit A, §II(2), p. 3, and Appendix A, §32(a), pp. 7-8.

⁴¹ Applicant Exh. 12, Appendix A, §32(a), pp. 7-8.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 8th day of March 2022, a copy of this pleading was either e-mailed or mailed by first-class U.S. mail, postage prepaid, to all the parties on the Service List compiled by the Commission in this proceeding.

Kenneth Marc Albert

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE APPLICATION OF	*	
MORGNEC ROAD SOLAR, LLC FOR A	*	
CERTIFICATE OF PUBLIC CONVENIENCE	*	Case No.: 9499
AND NECESSITY TO CONSTRUCT A 45.0 MW	*	
SOLAR PHOTOVOLTAIC GENERATING FACILITY	*	
IN KENT COUNTY, MARYLAND	*	

* * * * * * * * * * * *

RESPONSE MEMORANDUM OF THE OFFICE OF PEOPLE’S COUNSEL

DAVID S. LAPP
PEOPLE’S COUNSEL

William F. Fields
Deputy People’s Counsel

Frederick H. Hoover
Assistant People’s Counsel

Maryland Office of People’s Counsel
6 St. Paul Street, Suite 2 102
Baltimore, Maryland 21202
Office: (410) 767-8150

March 9, 2022

RESPONSE MEMORANDUM OF THE OFFICE OF PEOPLE'S COUNSEL

The Office of People's Counsel files this response to the memorandums of appeal filed by the Kent Conservation And Preservation Alliance, Inc. (KCPA) and Kent County, Maryland on February 17, 2022. Both memorandums appeal the Proposed Order of Public Utility Law Judge issued on January 7, 2021. The proposed order approved the application for a Certificate of Public Convenience and Necessity (CPCN) from Morgnec Road Solar, LLC for a 45-megawatt solar photovoltaic facility to be located in Kent County, Maryland.

OPC supported the granting of the CPCN to the Morgnec Road Solar PV project since the project will contribute to the State's renewable energy and greenhouse gas emission reduction goals. The conditions on the project resulting from the state agency review and the settlement between the state agencies and Morgnec Road Solar provided positive benefits to the local communities. These conditions, in particular a fixed termination date for the solar facility, enhanced vegetation buffers around the project and public amenities funded by Morgnec Solar, are precedent setting in CPCN proceedings.

BACKGROUND

On November 30, 2018, Morgnec Road Solar applied for a certificate of public convenience and necessity to construct a nominal 45.0 megawatt alternating current solar photovoltaic (PV) facility in Kent County, Maryland pursuant to Md. Public Utilities Article § 7-207. Morgnec Road Solar will be a 45.0 MW solar PV project on two parcels totaling approximately 253 acres of property in Kent County with accompanying

interconnection facilities necessary to interconnect the project to the Chestertown Substation. Morgnec Road Solar will involve a capital investment of approximately \$80 million and create 100 to 200 temporary design, management, and construction jobs at the height of construction. The Power Plant Research Program (PPRP) undertook the required analysis of the proposed solar facility. The PPRP review included analysis on behalf of the Maryland Departments of Natural Resources, Environment, Agriculture, Transportation, Commerce, Planning and the Maryland Energy Administration. The Commission granted the petitions to intervene of the Kent Conservation and Preservation Alliance, Kent County, and the town of Chestertown. The Commission held public hearings on April 24, 2019, and November 4, 2021. Evidentiary hearings were held on November 8, 9, and 10, 2021.¹

The proposed order of the Public Utility Law Judge was issued on January 7, 2022. The proposed order granted the CPCN with conditions agreed to by PPRP and the applicant. KCPA and Kent County filed a Notice of Appeal on February 7, 2022. The Memorandums of Appeal were filed by KCPA and Kent County on February 17, 2022. Kent County's memorandum is repeated verbatim from the memorandum of KCPA.

¹ Office of People's Counsel Post-Hearing Brief at 3, Case No. 9499 (December 3, 2021).

ARGUMENT

I. The Public Utility Law Judge gave due consideration to Kent County's position in granting the CPCN to Morgnec Road Solar PV Project.

KCPA and Kent County contend that the PULJ failed to give due consideration to position of Kent County.² KCPA claims that preference was given to the testimony of Morgnec Road Solar and PPRP witnesses as opposed to KCPA and the local government witnesses.³ The appealing parties assert that the Morgnec Road Solar PV project was not in compliance Kent County's zoning rules for utility solar facilities.⁴ In fact, KPCA and Kent County's complaint is not that the PULJ failed to give due consideration but that the PULJ did not agree with their position. As described in the proposed order, the zoning ordinances of Kent County acted as a de facto ban on the location of solar facilities in the county.⁵

The proposed order summarized the positions of officials of the local government in opposition to the granting of the CPCN to Morgnec Road Solar. It cited the view of a local government official that the Morgnec Road Solar PV project was inconsistent with the Kent County Comprehensive Plan.⁶ The proposed order noted that the proposed location of the solar facility was on property not zoned for such energy facilities. However, the PULJ stated that the Commission would preempt local zoning ordinances that operate as bans on the development of solar facilities.⁷

² Kent Conservation and Preservation Alliance Memorandum in Support, February 17, 2022, at 10-11.

³ *Id.* at 6.

⁴ *Id.* at 7.

⁵ Proposed Order of Public Utility Judge at ¶ 137, Case No. 9499 (January 7, 2022).

⁶ *Id.* at ¶ 43-44.

⁷ *Id.* at ¶ 135.

In the review of the Kent County Zoning Ordinance which affected the Morgnec Road Solar Project the proposed order found:

The Ordinance is overly restrictive because although it is perhaps not a de facto ban on all utility scale solar projects, the Ordinance severely restricts economically viable utility-scale solar projects from being developed in Kent County. As such, the Ordinance unduly interferes with the State achieving its RPS goals. Accordingly, the fact that the Project is not consistent with Kent County zoning will be given little weight in the analysis of the factors under PUA §7-207(e). Such treatment is appropriate under the Commission's pre-emption authority.⁸

The proposed order examined Kent County's land use and zoning regulations and found that the regulations improperly impeded the location of solar PV facilities such the Morgnec Road Solar PV project in Kent County. The proposed order's review and consideration of the county's local zoning laws provides the due consideration expected by the statutory process for consideration of CPCN applications.

The proposed order reviewed in detail the Morgnec Road Solar PV project's consistency with the Kent County Comprehensive Plan. Starting from the premise that the proposed solar facility would be consistent with the plan if it furthers and is not contrary to the plan's policies, the proposed order examines the plan's goals and strategies.⁹ The proposed order reviews the Kent County Comprehensive Plan's overall principles of stewardship of the county's lands and waters, creation of sustainable communities, protection of the environment, and the balancing of efficient growth and

⁸ *Id.* at ¶ 137.

⁹ *Id.* at 142.

resource protection.¹⁰ Further, the plan provides an approach to encourage appropriate alternative energy resources and a strategy to identify and zone locations for utility scale renewable energy facilities such as the Morgnec Road Solar project.¹¹

Kent County contended that the Morgnec Road Solar PV project was inconsistent with the County Comprehensive Plan as the location was considered for a site for future residential and commercial development. The proposed order found that due to the limited duration of the operation of the solar facility as a result of a fixed termination date in the revised license conditions, the property was available for future development. The proposed order also found that due to the limited duration of the operation of solar facility and the facility's contribution to improved air quality, the facility was in furtherance the goals of the plan. Based on these findings, the proposed order concluded that the CPCN application was consistent with the Kent County Comprehensive Plan.¹²

A unique aspect of the CPCN decision is the siting conditions agreed to by Morgnec Road Solar beyond the traditional CPCN license conditions. As a result of a settlement between Morgnec Road Solar and PPRP, the license conditions for the CPCN include not only the operation time limit on the facility but also require compliance with newly developed setback requirements, enhanced vegetation buffers, and public amenities. These public amenities to be located adjacent to the solar facility are funded by Morgnec Road Solar but planned and developed by the local community.¹³ The

¹⁰*Id.* at 142.

¹¹*Id.* at 143.

¹² *Id.* at 146.

¹³ *Id.* at 39.

settlement provisions set new precedents, and they show Morgnec Road Solar's efforts to work with the state agencies to become an unobtrusive community member.

Contrary to the KCPA's argument, the PULJ gave ample consideration to Kent County's issues and concerns. The review both of the current zoning laws of Kent County and the Comprehensive Plan found the proposed solar facility a permissible use of the land consistent with the intent and goals of the Comprehensive Plan. The CPCN award to Morgnec Road Solar appropriately considered the positions of the local governments as required under the law.

II. KCPA and Kent County misinterpret the consideration owed to the positions of local government within the CPCN evaluation process.

KCPA and Kent County list a number of concerns and issues with the process for evaluating CPCN applications, the role of state agencies, and, primarily, the lack of deference shown to local government entities.¹⁴ KCPA complains about the statutory process for the approval of applications for CPCN that was enacted by the General Assembly, implemented by the Commission, administered by state agencies under the direction of PPRP, and interpreted by the courts.¹⁵ KCPA argues that the General Assembly's adoption of enhanced renewable energy production including solar PV leads to the Commission and state agencies failing to give proper deference to local governments.¹⁶

¹⁴ Kent Conservation and Preservation Alliance Memorandum in Support, February 17, 2022, at 3-5.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 4.

KCPA views the Commission's implementation of the CPCN process as rendering due consideration of local governments a meaningless exercise. KCPA questions the Commission's role as a land use authority regarding zoning matters involved in the siting of energy facilities.¹⁷ But as KCPA concedes, the General Assembly has created the statutory scheme for consideration of a CPCN application.¹⁸

KCPA objects to PPRP's development of final license conditions, including the provisions incorporated as part of the settlement agreement. KCPA further argues that the weight given to the local government entities demonstrates a misinterpretation of the process of siting energy facilities. The process for considering a CPCN application, however, has been in the Public Utilities Article for many years. The process allows for the consideration of applications to construct energy generation facilities while considering the environmental, natural resource, social, and historical factors of the location of the facility.

The Power Plant Research Program in the Department of Natural Resources was created in the early 1970's to perform a multi-agency consolidated review of proposed energy generation facilities located in the State. The General Assembly found that a state siting process to allow for the construction of energy generation facilities while considering the environmental, natural resource, social, and historical factors of the

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 3.

location of the facility would eliminate protracted litigation over particular sites for energy generation facilities.¹⁹

PPRP reviews energy generation projects that are independent of public utilities as well as renewable energy projects such as the Morgnec Road Solar PV project. The recent surge of renewable energy generation facilities is driven in large measure by the General Assembly's decision to encourage the deployment of renewable energy through the Renewable Portfolio Standard. This policy was most recently expanded and accelerated as a result of the Clean Energy Jobs Act, which increased the amount of the RPS that must be solar.²⁰ The move to increase use of renewable energy like solar for the generation of electricity responded to the effects of climate change from greenhouse gas emissions from fossil fuels. One of the impacts of climate change is sea level rise affecting low levels areas of the state such as Kent County.

PPRP, as a result of an application for a CPCN filed with the Commission, undertakes the review of the proposed project and its location for impacts on natural resources, overall environmental effects, social, and cultural effects, and it seeks input from local government authorities. PPRP oversees a process involving seven state agencies who review the particular aspects of the proposed project relevant to the expertise of that agency. PPRP seeks information from applicants and in certain cases

¹⁹ Power Plant Research Program website <https://dnr.maryland.gov/pprp/Pages/default.aspx>.

²⁰S.B. 516, 2019, Leg. 439th Reg. Sess. (Md. 2019)(the Clean Energy Jobs Act of 2019 ("CEJA 2019)). Chrome-extension://oemmndcbldboiebfnladdacbfmadadm/<https://mgaleg.maryland.gov/2019RS/bills/sb/sb0516e.pdf>.

requires studies on the proposed project's impact. The final result is a consolidated list of recommendations in the form of a letter signed by the appropriate state agencies to the Commission. This letter includes specific conditions which PPRP on behalf of the State government requests the Commission to adopt as part of the granting of CPCN to the applicant for the project. In many cases the applicant will agree to the recommended conditions for the project or certain conditions may be revised in response to reactions from the applicant. The final list of recommendations or license conditions becomes part of the final CPCN.

The CPCN process begins with a consolidated state agency review of the various aspects and impacts of the energy facility on the state's natural and cultural resources leading to the recommended license conditions. An independent evaluation by the Commission within a proceeding including separate input from Staff, OPC and usually the local governments create an efficient process to site energy generation facilities in the state. This process provides a project review by the state, independent evaluation by the Commission, and a certain path and timeframe for the project developer.

The General Assembly understood the critical role that energy generation facilities have for the State's residents and the economy. Adequate supplies of electricity are essential for the society and the economy to perform, especially in the digital age. The shift of energy generation from fossil fuels to renewable energy such as wind and solar is necessary to assure the adequate supply but also to reduce the level of greenhouse gas emissions. The energy goals established by the General Assembly drive the potential

projects of energy developers, the review by the State agencies, and the Commission's final evaluation.

This siting process includes consideration of the views of the local government entities in the locality of the proposed project. As set forth in the evaluation criteria of the CPCN process, the Commission is to give due consideration to the opinion of the local governments impacted by the proposed project as to land use, zoning and generally esthetics related to the project. However, giving due consideration does not mean granting the local governments a veto over a proposed project. Such a veto right would cede the State's authority to set energy policy and undermine the State's policy goals of ensuring adequate electricity supply and the continued transition to renewable energy.

The proposed order summarized this limited role for local governments:

The Commission's siting authority over generating stations preempts local zoning. *Bd. of County Commissioners of Washington County v. Perennial Solar, LLC*, 464 Md. 610, 644 (2019) (finding that "PUA § 7-207 preempts by implication local zoning authority approval for the siting and location of generating stations which require a CPCN"). The Court of Appeals has found that the CPCN statute "is comprehensive and grants the PSC broad authority to determine whether and where [solar energy generating systems] may be constructed." *Id.* Further, "the General Assembly has expressly limited the role of local government to an advisory role in the CPCN approval process."²¹

The proposed order described the evaluation process undertaken by the Commission of the statutory factors for consideration of a CPCN.

The Commission recently held that "[i]n reaching a siting decision, the Commission must conduct a multi-faceted review, including giving 'due consideration' to the recommendations of the local jurisdiction in which the generating station is to be developed. However, Maryland law is clear

²¹ *Id.* at 643.

that the Commission is not bound by these recommendations, but must consider them alongside various other local and statewide factors.” In the Matter of the Application of Biggs Ford Solar Center LLC for a Certificate of Public Convenience and Necessity to Construct a 15.0 MW Solar Photovoltaic Generating Facility in Frederick County, Maryland, Case No. 9439, Order No. 89668, p. 10 (November 24, 2020). CPA may not appreciate or understand the limited input of local governments and the Commission’s process for considering the views of local governments within the CPCN application evaluation, but their recourse is to convince the General Assembly to change the law.

KCPA’s arguments about the role of local governments in the CPCN process are incorrect. The Commission is required to consider the views of local governments affected by the CPCN application. The Commission is not required to defer to the views of the local government entity when considering a range of factors in the CPCN evaluation process.

CONCLUSION

The proposed order correctly evaluated all of the local and statewide factors in the review of the Morgnec Road Solar project along with the PPRP license conditions, as revised under the settlement between Morgnec Road Solar and PPRP. The Commission should deny the appeal of KCPA and Kent County and adopt the proposed order as its final order.

Respectfully Submitted,

DAVID S. LAPP
PEOPLE’S COUNSEL

William F. Fields
Deputy People’s Counsel

Continued for signature:

/electronic signature/

Frederick H. Hoover
Assistant People's Counsel

Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
Office: (410) 767-8150

Dated: March 9, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of March 2022, the foregoing Response Memorandum of the Office of People's Counsel was either hand-delivered, e-mailed or mailed first-class, postage prepaid to all parties of record to this proceeding.

Respectfully submitted,

/electronic signature/

Frederick H. Hoover

Assistant People's Counsel

Office of People's Counsel

6 St. Paul Street, Suite 2102

Baltimore, Maryland 21202

Office: (410) 767-8150

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE APPLICATION OF	)	
MORNEC SOLAR, LLC FOR A CERTIFICATE	)	
OF PUBLIC CONVENIENCE AND NECESSITY	)	Case No. 9499
TO CONSTRUCT A 45 MW SOLAR	)	
PHOTOVOLTAIC GENERATING FACILITY IN	)	
KENT COUNTY, MARYLAND	)	

**STATE OF MARYLAND, DEPARTMENT OF NATURAL RESOURCES,
POWER PLANT RESEARCH PROGRAM’S REPLY MEMORANDUM**

The Department of Natural Resources, Power Plant Research Program, by and through undersigned counsel, submits this response to the memoranda on appeal filed by the Kent County Commissioners (“Kent County”) and Kent County Preservation Alliance (“KCPA”), (collectively, “Appellants’ Memoranda”)¹ appealing the Proposed Order issued by Public Utility Law Judge Lawrence in the above-captioned case on January 7, 2022 (ML No. 239005).

The procedural history and underlying facts of this case are summarized in the Proposed Order at pp. 1-14, and the Public Utilities Article § 7-207 “due consideration” factors for evaluation of an application for a Certificate of Public Convenience and Necessity (CPCN), are individually addressed on pp. 7 – 71 of the Proposed Order. An abundantly fair and equitable opportunity to participate in each aspect of this case throughout its three-year progress was given to all parties. All parties - including KCPA and Kent County - actively participated to state and

¹ The memoranda on appeal of Kent County and of KCPA include many identical arguments and will be collectively referred to herein as “Appellants”. Citations to KCPA memorandum will be referenced as “KCPA” and Kent County’s will be referenced as “County”. There may be some error in citation to specific page numbers as the appellants’ memoranda were not paginated.

support their respective positions; all parties filed pre-hearing testimony, participated in the evidentiary hearing, and submitted post-hearing briefs. For the sake of expediency, PPRP's Post-Hearing Brief, which addresses the Appellants' position and supporting arguments set forth in their memoranda, is herein referenced and incorporated into this Reply Memorandum.

Appellant KCPA asserts a litany of alleged error - including in the Proposed Order (KCPA, at pp. 4, 6), the Proposed Settlement (KCPA at 7-13; County at 4-6), PPRP's role in the CPCN process (KCPA at pp. 11-14), the Commission's rules (KCPA at 5), and even the legislature and the courts (KCPA at 4) – caselaw is not cited in support of these alleged deficiencies. In support of their appeal of the Proposed Order, Appellants reference the *Mills Branch Solar* case (PSC Case No. 9411), a case where the Commission denied a CPCN application in Kent County. (KCPA at 13 -14; County at 9-10) Appellants note that the Final Order in *Mills Branch* “evaluated the competing testimonies of the Applicant, PPRP, Kent County, and KCPA... [and] concluded that the solar facility proposed by Mills Branch Solar, LLC was not in the public interest” (*Id.*) However, as acknowledged by Appellants, “the properties involved in each case are not identical in size, location and character” (*Id.*). As a result - and a matter absent from the Appellants' argument - there is a comparative lack of persuasive evidence of the project's negative impact in this case.

In *Mills Branch Solar*, Order No. 88021(ML No. 88021), issued January 10, 2017, the Commission concluded that the weight of the opposing parties' evidence was significant both as to the project's negative impacts on the local agricultural economy (Order No. 88021, pp. 37-39) and the impacts on the more pristine viewshed if the Mills Branch project were built, (*Id.*, pp. 44-45). In that order, the intervenors' evidence “... was a major factor in [the] decision to deny the

Application (*Id.*, p. 49). In contrast, there is no record evidence in this case insufficient to show that the project's benefits² are outweighed by its negative impacts.

Contrary to the unsupported³ and inaccurate⁴ assertions of error in Appellants' memoranda, the Proposed Order duly considers all the required statutory factors for review of an application for a CPCN, discussing each parties' testimony. This includes the Project's consistency with Kent County's Comprehensive Plan and Zoning and the Town and County's recommendations and concerns (Proposed Order at pp. 42, 69)⁵ As most recently reaffirmed in *Board of County Commissioners of Washington County v. Perennial*, 464 Md. 610, 644 (2019) opinion, the recommendation and decisions on local zoning and comprehensive planning are not binding nor controlling on the ultimate siting decisions that the Commission alone is charged with making.⁶

Ignoring *Perennial's* holding, and without any evidentiary support, the Appellants assert that the Proposed Order is "fatally flawed."⁷ This conclusion rests on an illogical argument that the impacts of the project on local comprehensive planning are not "duly considered" because the Proposed Order adopts an unfair settlement, which PPRP supported and helped negotiate; thus, "the impact of PPRP's advocacy on the Proposed Order is obvious and profound and cannot now be excised" (Appellants' Memoranda, p. 4). Appellants misstate PPRP's role in the CPCN process⁸ and fail to explain how the settlement's more stringent conditions are "largely to the

² Proposed Order, pp. 20-24; PPRP Post-Hearing Brief, pp. 1-2.

³ See Appellants' Memoranda, pp. 6-8 (criticism of Proposed Order's consideration of evidence without any reference or citation to record evidence)

⁴ For example, the Appellant's Memoranda erroneously states that the Proposed Order completely fails to mention the testimony of Amy Moredock regarding the Renewable Energy Task Force; the Proposed Order addresses Ms. Moredock's testimony on pp. 16-17.

⁵ The Town's comprehensive plan was considered even though none of the project is sited within its boundaries. Proposed Order, p. 1. c

⁶ See PPRP Post-Hearing Brief at pp. 2-4, fn. 11, (discussing *Perennial's* delegation to the PSC the exclusive authority to approve generating stations).

⁷ Appellants' Memoranda, p. 4

⁸ Proposed Order, pp. 14-15.

detriment of local officials and interested parties.” (Appellants’ Memoranda at 3) Appellants’ conclusion is without legal merit or factual basis.

It is important to note that the active participation of local jurisdictions and organizations can provide significant benefit to the review of a CPCN application by the Commission. In this case, this is reflected by incorporation of concerns put forth in testimony by Kent County, the Town of Chestertown and KCPA, which helped result in license conditions that are more effective.⁹ Ignoring the fact that the Proposed Order and conditions eliminate and avoid the project’s negative impacts, the Appellants’ Memoranda simply provide statements unsupported by record evidence or legal authority¹⁰ and, thus, are without merit.

The Proposed Order gives appropriate and due consideration to all the required statutory factors, including the recommendation of the local jurisdiction and consistency with comprehensive planning, and adopts license conditions imposing requirements that both ensure compliance with all statutory requirements and eliminate or minimize the Project’s potential negative impacts. Accordingly, the Proposed Order should be affirmed and made final.

March 9, 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra S. M. '82", with a stylized flourish at the end.

⁹ Proposed Order, pp. 14-15; PPRP Pre-Hearing Brief, pp. 6-14.

¹⁰ For example, without any caselaw or statutory basis, Appellants’ Memoranda asserts that the project would definitively be required to comply with Kent County’s newly adopted landscaping requirements (CHR 7-2020, adopted in February 2021). Appellants’ Memoranda, p. 13. This is expressly contrary to the controlling authority set forth in *Perennial*.

Sondra Simpson McLemore
Assistant Attorney General

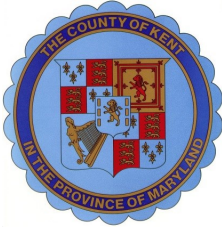
Counsel to the DNR, Power Plant
Research Program
1800 Washington Blvd., Suite 755
Baltimore, MD 21230
Tel: 410-537-4062
e-mail: sondra.mclemore@maryland.gov

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing PPRP Reply to Memoranda on Appeal was sent via e-mail to all parties on the Service List for Case No. 9499 on March 9, 2022.

A handwritten signature in black ink, appearing to read "Sondra Simpson McLemore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sondra Simpson McLemore
Assistant Attorney General



**Sonal Ram, Director, Office of Environmental Design, Maryland
Department of Transportation
3/15/2022
County Commissioners Meeting**

Item Summary:

Noxious Weed Control Contract Amendment

ATTACHMENTS:

Description

03.15.22 Sonal Ram, Director, Office of Environmental Design, Weed Control - State FY 2022 Amendment I to Project Task Agreement of 8.31.21, Control No. P0220, MDOT SHA and KC Weed Control Board

February 7, 2022

Mr. P. Thomas Mason
President for the Board of Kent County Commissioners
400 High Street
Chestertown, MD 21620

RE: Weed Control – State Fiscal Year 2022
Amendment I to Project Task Agreement of August 31, 2021

Dear Mr. Mason:

The Maryland Department of Transportation State Highway Administration (“**MDOT SHA**”) and Kent County, Maryland by the Kent County Weed Control Board (“**COUNTY**”) executed a Project Task Agreement dated August 31, 2021, KE001 (“**PTA**”), attached as EXHIBIT 1 between the parties pertaining to funding the application of herbicide to noxious weeds for the State Fiscal year 2022, which runs from July 1, 2021 to June 30, 2022 (“**SFY22**”) in accordance with the terms and conditions set forth in a Memorandum of Understanding (“**MOU**”) executed on August 31, 2021 (**Control No: P02204 K-1**) incorporated here by reference, by and between MDOT SHA and the COUNTY.

The parties now wish to amend the PTA with this document (hereafter called “**AMENDMENT I**”) by changing the total amount to be invoiced during SFY22 and by changing the amount available to the COUNTY as directed by MDOT SHA’s OED by an additional Twenty-Nine Thousand Five Hundred Dollars (\$29,500.00).

This AMENDMENT I shall amend the PTA as follows:

On Page 2, Section I.D, line 2, **delete** “...Nineteen Thousand Two Hundred Dollars (\$19,200.00)...” and **replace it with**, “...Forty-Eight Thousand Seven Hundred Dollars (\$48,700.00)...”

On Page 2, Section I.E, line 4, **delete**, “...Twelve Thousand Nine Hundred Dollars (\$12,900.00);” **and replace it with**, “Thirty-Nine Thousand Nine Hundred Dollars... (\$39,900.00)...”

On Page 2, Section I.E, line 8, **delete**, “...Six Thousand Three Hundred Dollars (\$6,300.00);” **and replace it with**, “Eight Thousand Eight Hundred Dollars... (\$8,800.00);”

Mr. P. Thomas Mason
Page Two

Except as modified by this AMENDMENT I, the provisions of the MOU and the PTA shall remain in full force and effect. This AMENDMENT I shall inure to and be binding upon the parties hereto, their agents, successors and assigns. The recitals (WHEREAS clauses) are incorporated herein as part of this AMENDMENT I and as part of the PTA.

If the terms of this AMENDMENT I meet your approval:

1. Please sign and date the two (2) originals of this AMENDMENT I where indicated.
2. Scan and send a copy of the signed AMENDMENT I to
SHAAGreementsTeam@mdot.maryland.gov and to WeedBoards@mdot.maryland.gov.
3. The other signed AMENDMENT I is to be retained by the COUNTY for its use and information.

Sincerely,

Ms. Sonal Ram, P.E.
Director
Office of Environmental Design

Date

Verification that PTA is consistent with MOU:

Dale Edwards
Division Chief, OPCM
MDOT State Highway Administration

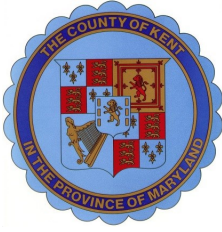
Date

William J. Bertrand
Director
Office of Finance

KENT COUNTY CONCURRENCE:

By: P. Thomas Mason
Mr. P. Thomas Mason
President for the Board of Kent County Commissioners

March 15, 2022
Date



Shelley L. Heller, County Administrator
3/15/2022
County Commissioners Meeting

Item Summary:

Letter of Support - Town of Galena

Letter of Support - Choptank Community Health Systems, Inc.

ATTACHMENTS:

Description

03.09.22 Letter of Support, Jennifer Ruffner, Maryland Heritage Areas Program, Town of Galena

Town of Galena Mural

03.22.22 Jen Thayer, Administrator, Maryland Community Health Resources Commission, RFP Addressing Chronic Disease Prevention and Disease Management (Diabetes, Hypertension, Heart Disease and Others)



The County Commissioners of Kent County
P. Thomas Mason, President | Ronald H. Fithian, Member | Robert N. Jacob, Jr., Member
Shelley L. Heller, County Administrator | Thomas N. Yeager, County Attorney

March 9, 2022

Jennifer Ruffner, Administrator
Maryland Heritage Areas Program
Maryland Historical Trust
100 Community Place, 3rd Floor
Crownsville MD 21032

RE: Letter of Support, Town of Galena, Maryland Heritage Areas Authority Grant Application

Dear Ms. Ruffner:

On behalf of the Kent County Commissioners, I am pleased to convey the Board's support for the Town of Galena's grant application to the Maryland Heritage Areas Authority Grants Program, which seeks funding for a heritage mural placed on the Sassy River Market.

This project will benefit the community by exhibiting the town's history and roots, enabling those who visit and live here to build on the solid foundation of those who preceded them. This project aligns with the County's mission to strengthen communities, and positively impact the lives of those who live and visit in those communities. We request you give this project every possible consideration.

Very truly yours,

A blue ink signature of Shelley L. Heller, County Administrator, written in a cursive style.

Shelley L. Heller, County Administrator

SH:sew

CC: John T. Carroll, Jr., Mayor, Town of Galena





STATE OF MARYLAND

Community Health Resources Commission

45 Calvert Street, Room 336 • Annapolis, Maryland 21401

Larry Hogan, Governor - Boyd Rutherford, Lt. Governor

Edward J. Kasemeyer, Chair – Mark Luckner, Executive Director

March 14, 2022

Request for Proposals for Independent Reviewer

Addressing chronic disease prevention and disease management, including diabetes and its comorbidities, hypertension, heart disease and others

1. Summary Statement and Background:

The Maryland Community Health Resources Commission (“CHRC” or the “Commission”), an independent agency operating within the Department of Health, is seeking to hire an independent reviewer to evaluate grant proposals on criteria established by the CHRC and submit recommendations regarding which applicants should be invited to present their grant proposals to the CHRC in mid-to-late May 2022.

Grant proposals will be due to the CHRC on March 22, 2022, and grant awards will be made by the CHRC in mid-to-late May 2022. Independent reviewers will be required to submit their evaluations of the grant proposals to the Commission on or before April 15, 2022.

Independent reviewers cannot be affiliated with or connected with any of the entities applying for Commission grants, either in direct employment, contractual, or a consulting role. A Conflict of Interest Affidavit and Disclosure statement (Attachment A) will be required of selected reviewers.

2. Minimum Qualifications:

A. Qualifications of Grant Reviewers:

- i. Reviewers will have a demonstrated ability to provide concise and thorough evaluations of each assigned grant application and consistent with the criteria defined by the CHRC FY 2022 RFP.
- ii. Experience in, and/or demonstrated knowledge of the delivery of integrated health care and social services with an emphasis on safety-net healthcare providers in Maryland.
- iii. Experience in, and/or demonstrated knowledge of chronic disease prevention and management, in particular the prevention and treatment of diabetes and cardiovascular disease, the associated complications, and comorbidities.

B. Preferred Experience of Grant Reviewers:

- i. An understanding of the intersection between the social determinants of health and health outcomes as fundamental to advancing health equity and the impact on at-risk populations.

- ii. Experience in, and/or knowledge of essential health services including the direct delivery of primary care services.
- iii. Experience in, and/or demonstrated knowledge of chronic disease prevention and management, in particular the prevention and treatment of diabetes and cardiovascular disease, the associated complications, and comorbidities.
- iv. Experience in reviewing health care grants.

3. **Procurement Officer:**

Jen Thayer, Administrator
Maryland Community Health Resources Commission
45 Calvert Street, Room 336
Annapolis, MD 21401
Phone: (410) 260-6086
Email: jen.thayer@maryland.gov

4. **Deliverables:**

a) The following deliverables are due to CHRC staff no later than April 15, 2022, by 12:00 PM (noon):

- i. A single review sheet (will be provided by the CHRC) and score for each proposal reviewed.
- ii. An overall assessment (normative evaluation) in memorandum format”
 - Ordered from highest to lowest ranked, of each proposal received and a recommendation on whether the applicant should be invited to present its grant proposal to the CHRC in mid-May 2022.
 - Reviewers will be requested to provide a well-reasoned rationale and justification for their recommendations to advance or reject each grant application assigned for review and consistent with the application scoring system provided by the CHRC.
 - Reviewers will be requested to provide an assessment of how each application addresses the Strategic Priorities set forth in the CHRC FY 2022 RFP and whether the proposed project plan complies with the specification stated in the applicants selected Area of Focus.

b) The independent reviewer will attend a meeting with CHRC staff and a Review Committee of CHRC Commissioners. The meeting may take place virtually or at a location to be determined to discuss the proposals reviewed (minimum 3 hours) and will occur in mid-April 2022, on a date to be determined.

5. The term of the contract is from March 25, 2022, through June 15, 2022.

6. The contract to be awarded will result from a **Small Procurement II / Small Procurement III**.

7. **Bid/Proposal Submission Information:**

a) Submit bids/proposals via email to Jen Thayer, CHRC Procurement Officer at: jen.thayer@maryland.gov no later than 12:00 pm (noon) March 21, 2022.

b) Submission Documents:

1) Proposal containing the following information:

- i. Name, organization, and contact information (mailing address, telephone number and email address).
- ii. Current copy of your resume or CV (including resumes of all parties working on the project).
- iii. A statement illustrating your knowledge of the delivery of integrated health care and social services, with an emphasis on safety-net healthcare providers in Maryland.
- iv. A statement illustrating knowledge experience in, and/or demonstrated knowledge of chronic disease prevention and management, in particular the prevention and treatment of diabetes and cardiovascular disease, the associated complications, and comorbidities
- v. Detail your understanding of the intersection between the social determinants of health and health outcomes fundamental to advancing health equity and its impact on at-risk populations.
- vi. A description of your experience in reviewing health care grant applications.

2) Total Compensation for the bid/proposal is to be calculated as follows:

- i. Unit cost for the review of one applicant proposal, multiplied by XX proposal reviews.
 - a. **The number of expected applicant proposals under this Area of Focus is approximately 29.**
- ii. Meeting attendance – estimate four hours at an hourly rate to be determined by the potential reviewer.
- iii. Permissible pass-through costs will be reimbursed when submitted with appropriate documentation. Permissible pass-through costs are mileage reimbursement to attend one CHRC Board meeting (at the standard IRS rate), photocopies, and postage for delivery of original bids/proposals and other documentation to the Commission with prior approval.
- iv. Federal form W-9 Request for Taxpayer Identification Number and Certification.

c) Inquiries: Potential offerors can submit questions or comments to the Procurement Officer at jen.thayer@maryland.gov prior to the due date and time.

8. Award Determination:

a. The contract to result from this solicitation will be awarded to the Offeror submitting the Most Advantageous Offer. **The decision will be determined based upon each Offeror's price plus the following technical evaluation factors (Technical Evaluation Criteria):**

- i. Familiarity with the work and mission of the CHRC;
- ii. Knowledge of the delivery of integrated health care and social services with emphasis on safety-net healthcare providers in Maryland.

- iii. Knowledge of chronic disease prevention and management, in particular the prevention and treatment of diabetes and cardiovascular disease, the associated complications, and comorbidities.
- iv. Knowledge of essential health services including the direct delivery of primary care services.
- v. Knowledge and understanding of the intersection between the social determinants of health and health outcomes as fundamental to advancing health equity and its impact on at-risk populations.
- vi. Experience in reviewing health care grant applications.

9. Payment

- a. Invoices should be submitted to:

Maryland Community Health Resources Commission
45 Calvert Street, Room 336
Annapolis, MD 21401

- b. Invoice should be submitted upon completion of all deliverables and attendance at and participation in the meetings as described in Section 4 above. Invoices should be submitted to the Procurement Officer, but not later than May 31, 2022.

- c. Amount invoice must not exceed the price quote by the Contractor on the price form.

- d. The invoice should include the date, vendor name and address as identified on the Federal Form W9 (B.2.iv above) as well as a unique invoice number and, the Federal tax ID number for your organization, and the address of the Maryland Community Health Resources Commission – 45 Calvert St., Room 336, Annapolis, MD 21401.

10. The Commission agrees to provide guidance concerning contract activities, as needed; evaluate and determine acceptance of deliverables; and payment of invoices.
11. **MBE, Small Business Reserve, Veterans', Requirements:**
- There is no MBE subcontractor participation goal for this procurement.
 - There is not VSBE participation goal for this procurement.
 - This solicitation is not designated as a Small Business Reserve (SBR) Procurement.
12. The Price Proposal Form is included as Attachment B.
13. The standard small procurement contract is included as Attachment C.

ATTACHMENT A

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____ By: _____
(Authorized Representative and Affiant)

ATTACHMENT B
PRICE PROPOSAL FORM

FOR THE RFP FOR SECURING INDEPENDENT REVIEWER
Addressing chronic disease/diabetes prevention and disease management

COMPANY NAME: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

COMPANY ADDRESS: _____

OFFICE TELEPHONE NUMBER: _____ **FAX:** _____

CONTRACT CONTACT PERSON: _____

CONTACT E-MAIL ADDRESS: _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME: _____ **DATE:** _____

COST PER APPLICATION REVIEWED	\$
OR	
TOTAL COST FOR THIS CONTRACT	\$

ATTACHMENT C

STATE OF MARYLAND MARYLAND DEPARTMENT OF HEALTH SMALL PROCUREMENT CONTRACT

THIS CONTRACT (the "Contract"), is made as of the _____ day of _____, 20____ by and between the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF HEALTH ("Department"), and

("Contractor") whose principal office in Maryland is

and whose principal business address is

The parties agree as follows:

1. Scope of Contract.

- (a) The Contractor shall provide the following goods or services:

The scope of work or solicitation dated _____ is attached and incorporated by reference as Exhibit _____. The Contractor's bid or proposal dated _____ is attached and incorporated by references as Exhibit _____. If there is any conflict between this Contract and any exhibits incorporated by reference, the terms of this contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:
Exhibit A – the scope of work or solicitation and Exhibit B – the Contractor's bid or proposal.

- (b) **Changes.** This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract (including the Contract price).

2. **Term of Contract.** The term of this Contract shall be for the period of _____, 20____ through _____, 20____.

3. Compensation and Method of Payment.

- (a) **Compensation.** The total compensation for services to be rendered by the Contractor shall not exceed \$50,000.
- (b) **Method of Payment.** The Department shall pay the Contractor no later than forty-five days after the Department receives a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, State Finance and Procurement Article, Maryland Code, are prohibited.
- (c) **Tax Identification Number.** The Contractor's Federal Tax Identification Number is

. The Contractor's Social Security Number is

_____ (Individual Contractor Only). Contractor's Federal Tax Identification Number (or

_____ Social Security Number - Individual Contractor Only) shall appear on all invoices submitted by the Contractor to the Department for payment.

- (d) **Invoicing.** All invoices for services shall be signed by the Contractor and submitted to the Procurement Officer. All invoices shall be submitted in triplicate no later than the 15th of the month for the preceding calendar month. All invoices shall include the following information:

- Contractor name;
- Remittance address as identified on Federal Form W9- Request for Taxpayer Identification Number and Certification submitted as part of the Solicitation;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period;
- Invoice date;
- Invoice number
- The address of the Maryland Community Health Resources Commission
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Goods or services provided; and
- Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

4. **Procurement Officer.** The Department designates _____ to serve as Procurement Officer for this Contract. All contact between the Department and the Contractor regarding all matters relative to this Contract shall be coordinated through the Procurement Officer.
5. **Disputes.** Disputes arising under this Contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland, and by COMAR 21.10 Administrative and Civil Remedies. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer.
6. **Termination for Convenience.** The State may terminate this Contract, in whole or in part, without showing cause upon prior written notification to the Contractor specifying the extent and the effective date of the termination. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12(A)(2).
7. **Termination for Default.** If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the Department may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the State. Termination hereunder, including the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.
8. **Termination for Nonappropriation.** If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall be terminated automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

9. **Non-Discrimination in Employment.** The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law, including, but not limited to, the employment provisions of §13-219 of the State Finance and Procurement Article, Maryland Code and Code of Maryland Regulations 21.07.01.08, and the commercial nondiscrimination provisions of Title 19, Subtitle 1, State Finance and Procurement Article, Maryland Code.
10. **Maryland Law Prevails.** The laws of Maryland shall govern the interpretation and enforcement of this Contract. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any software license acquired hereunder.
11. **Anti-Bribery.** The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, partners, or controlling stockholders; nor any employee of the Contractor who is directly involved in the business's contracting activities, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND

MARYLAND DEPARTMENT OF HEALTH

(Seal)

By: _____

By: _____

(Printed Name and Title)

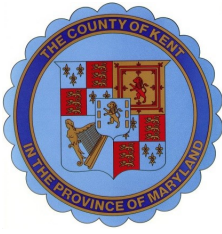
(Printed Name and Title)

Date

Date

Attachments: Exhibit A: Scope of Work or Solicitation

Exhibit B: Bid or Proposal



Procedures for Public Comment 3/15/2022 County Commissioners Meeting

ATTACHMENTS:

Description

Procedures for Public Comment

03.15.22 Public Comments Sign In Sheet

BOARD OF COUNTY COMMISSIONERS OF KENT COUNTY PROCEDURES FOR PUBLIC COMMENT

In addition to public appearance, the meeting is also being held virtually, via teleconference and viewable on the County website at www.kentcounty.com/government.

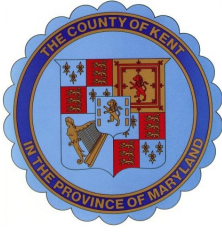
It is our desire that everyone who wishes to comment be given a fair and uninterrupted opportunity to express their views to the County Commissioners during this public comment period.

- Comments will be limited to three (3) minutes in length.
- Comments longer than three (3) minutes will be required to be submitted in writing.
- The Board President will open the meeting to Public Comments, citizens are asked to state their name, address, and the topic of interest. Citizens are to ask that all views be expressed in a respectful and civil manner. The Board respects your desire and right to convey your message freely. We ask as a courtesy to the Board and our citizens that you respect the Commissioners' request to refrain from naming citizens and name calling when offering any critique.

The County staff will acknowledge each caller, in the order they called in, announce the last 4 digits of the phone number that was used to call in, and will ask the caller to unmute their phone allowing them to comment.

**PUBLIC COMMENTS
SIGN IN SHEET
March 15, 2022**

NAME (please print)	ADDRESS	TOPIC



Jamie Williams, Director, Economic and Tourism Development
3/15/2022
County Commissioners Meeting

Item Summary:

Letter of Support - Sumner Hall

ATTACHMENTS:

Description

03.07.22 Jamie Williams, Director, Economic and Tourism Development, Letter of Support Sumner Hall



Department of Economic and Tourism Development

March 7, 2022

Andrew Arvizu Assistant Administrator
Maryland Heritage Areas Program
100 Community Place, 3rd Floor
Crownsville, MD 21032

Dear Mr. Arvizu:

Kent County Economic and Tourism Development are pleased to write this letter endorsing the application of Sumner Hall for funding by the Maryland Heritage Areas Authority. The proposed project – *Revealing the Commodore Collection* – will tell a unique story that should inspire individual reflection and promote community understanding of an important chapter in our local history.

Since re-opening to the community in 2015, Sumner Hall has provided a rich variety of programs and initiatives focused on African American history and culture that have been well-received by members of our community and visitors alike. It is a place that draws as diversified an audience as anywhere in the state of Maryland.

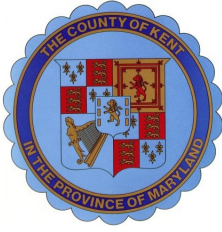
We believe that the exhibition and community education program proposed by Sumner Hall will allow a wide range of people to learn about the Commodore Collection thus furthering the mission of Economic and Tourism Development to promote history and culture to increase and encourage visitation. Sumner Hall is known throughout the community for producing high quality accessible exhibits and programs. Kent County benefits greatly from partner organizations, such as Sumner Hall, through the advocacy and dedication of its members and supporters. I believe that *The Commodore Collection* will be well received and provide a valuable learning opportunity to the local community and many visitors. Historical interpretation is extremely meaningful.

Thank you for considering this proposal.

Sincerely,

Jamie Williams, CEcD
Director

cc: The County Commissioners of Kent County



Jamie Williams, Director, Economic and Tourism Development
3/15/2022
County Commissioners Meeting

Item Summary:

Letter of Support - Main Street Historic Chestertown

ATTACHMENTS:

Description

03.07.22 Jamie Williams, Director, Economic and Tourism Development, Letter of Support Main Street Historic Chestertown



Department of Economic and Tourism Development

March 7, 2022

Maryland Heritage Areas Authority
% Maryland Historic Trust
100 Community Place
Crownsville, MD 21032

To Whom It May Concern:

The Main Street Historic Chestertown non-profit organization is applying for funding for a critical need: well-developed, self-guided Heritage Tours that will attract and retain long term visitors to the Stories of the Chesapeake Heritage Area.

Many towns on the Eastern Shore are viewed as "one-day" visits, underselling the wide range of experiences available within a short drive, and greatly diminishing the financial impact of these visitors. Heritage area sites and businesses would greatly benefit from multiple-day visitors.

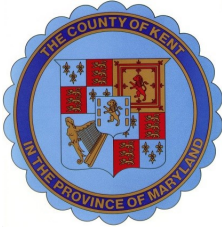
Designed to stimulate multi-day tourism based in Chestertown and Kent County, this project will analyze heritage resources, food, lodging, and other points of interest, linking them together in attractive, carefully constructed itineraries made available to the public online. The final work product: a full web site dedicated to regional travel and multi-day vacations, with themed options and a focus on resources within roughly a one-hour drive of Chestertown.

As these Heritage Tours would greatly impact Chestertown's tourism, providing revenue for our businesses, accommodations, and sites of interest, we fully support Main Street Historic Chestertown's application and hope you will consider funding this project in full.

Sincerely,

Jamie Williams, CECD
Director

cc: The County Commissioners of Kent County



Jamie Williams, Director, Economic and Tourism Development
3/15/2022
County Commissioners Meeting

Item Summary:

Letter of Support - First United Pentecostal Church of Kent County

ATTACHMENTS:

Description

03.07.22 Jamie Williams, Director, Economic and Tourism Development, Letter of Support First United Pentecostal Church



Department of Economic and Tourism Development

March 7, 2022

Barbara Fisher
Capital Grant Administrator
Maryland Historical Trust
100 Community Place, 3rd Floor
Crownsville, MD 21032

Dear Ms. Fisher,

It is with great pleasure that Kent County Economic and Tourism Development write this letter of support for the First United Pentecostal Church of Kent County, located at 11925 Augustine Herman Hwy, Kennedyville, MD 21645, which is applying for a Maryland Historical Trust Historic Capital Grant. If awarded, the grant funds would be used to support Phase Three–Siding Repair/Replacement & Paint of the organization’s rehabilitation of the 150-year-old historic church building.

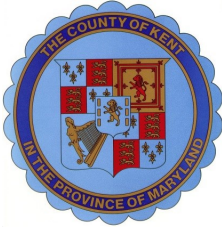
The historic church is an important contributor to the history and heritage of Kennedyville and Kent County as a beautiful example of an 1875 Gothic Revival church. In addition, the structure is an important element along Kent County’s section of the federally designated All-American Road Chesapeake Country Scenic Byway, a vital economic driver and literal pathway for visitors to travel Kent County.

We fully support this application and the rehabilitation work underway for this important Kent County landmark.

Sincerely,

Jamie Williams, CECD
Director

cc: The County Commissioners of Kent County



Contingency and Use of Fund Balance Report 3/15/2022 County Commissioners Meeting

ATTACHMENTS:

Description

3-8-2022 Commissioner Report Contingency

CONTINGENCY					
DATE APPROVED	DEPARTMENT		AMOUNT APPROVED		DESCRIPTION
8/24/21	Kent County Health Department (KCHD)	\$	227,000		Hiring of (2) nurses and (2) nursing assistants for facilitate vaccination and testing clinic
9/7/21	Circuit Court		7,131		Replace carpet in Kent County Circuit Court project #BM 22-01
9/28/21	Building and Grounds		32,785		Exterior painting of the Kent County Courthouse and Kent County Government Center RFP No BM-22-02
10/5/21	Planning & Zoning		1,039		Permit fee waiver-Kent Attainable Housing, Inc.
10/12/21	Buildings/Grounds-Court House		40,852		24909 Lambs Meadow Road HVAC split system-Court House
10/26/21	Water and Wastewater Fund		129,600		-
8/3/21	Buildings/Grounds-Court House		24,940		Water/Sewer allocation fees waiver for Kent County Society project in Worton (12/1/2020)
11/30/21	Kent County Health Department (KCHD)	(227,000)			Asbestos Abatement - Court House, replacement of tiles, Clerk of Courts
12/21/21	Information Technology		29,294		Move funding source to ARPA from Contingency Hiring of staff for vaccination & testing clinic
1/18/22	Legal Counsel		20,000		Replace Uninterrupted Power Supply (UPS)
1/25/22	Social Services		5,500		-
2/15/22	Kent Ag Center, Inc		41,710		Moranec Road Solar Litigation expenses
			-		Lodging at Driftwood Inn to help the homeless during the month of February
			-		Complete Pavilion Project
			-		-
			-		-
			-		-
			-		-
			-		-
			-		-
			-		-
			-		-
TOTAL			<u>\$ 332,851</u>		
BEGINNING CONTINGENCY BUDGET			\$ 400,000		
ENDING CONTINGENCY BALANCE			<u>\$ 67,149</u>		
USE OF FUND BALANCE					
DATE APPROVED	DEPARTMENT		AMOUNT APPROVED		DESCRIPTION
6/22/2021	Sheriff's Office	\$	54,776		Body Cameras five year agreement
6/22/2021	University of Maryland Extension Office	\$	15,156		Increase FY22 Allocation-PTK positions salary increase
10/19/2021	Human Resources	\$	3,269		Transfer of current employee to HR Specialist
TOTAL			<u>\$ 73,201</u>		
USE OF FUND BALANCE					
Note: If expenses are not reduced or offset by the same amount of fund balance used, this will result in a decrease in fund balance below our 7.5% target.					