



**MACLEOD**  
LAW GROUP LLC

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Commissioners of Kent County, Maryland

Dear Commissioners:

One of the things you will be urged to address in the upcoming comprehensive review of our land use ordinance is the so-called ten percent / enclave rule. (Article 5, Section 1.5(B)). This rule limits the subdivision of land in the AG zone to ten percent of the parcel in an enclave a great distance from existing roads.

I write this letter on behalf of my client Green Point Farms, LLC. Many of the observations I make are based on 49 years of land use practice in Kent County dealing with affected landowners, appraisers, realtors, and surveyors. Most notably, about two decades of dealing with the ten percent / enclave rule.

The policy behind the ten percent / enclave rule is a laudable policy: to insure the preservation of tillable farmland while pushing new development to growth areas. There is no question that the ten percent / enclave rule has discouraged development of farmland in the AG zone. With state regulations regarding septic disposal, the higher cost of lot development in an enclave, combined with the small number of lots, renders development virtually impossible. Indeed, no significant development of AG land has occurred since the rule was implemented two decades ago. The rule has essentially taken away the development value of farmland in our county.

There are two fundamental problems with the ten percent / enclave rule:

- (1) If the government wishes to take away significant property rights of farmers (even to implement a laudable policy) the government should pay for those property rights.

DEPARTMENT OF  
PLANNING, HOUSING & ZONING  
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- (2) The rule has severe unintended consequences that actually interfere with the ability of Kent County farmers to compete in programs where the government actually compensates farmers for placing permanent restrictions on development of their land.

The ability of a farmer to qualify for programs where the government purchases development rights is predicated on the underlying value of the land; as is a farmer's ability to borrow money for expansion or improvements (or even survival). Every appraiser operating in Kent County knows that Kent County land appraises significantly lower than adjacent Queen Anne's and Cecil Counties or neighboring Delaware counties. Accordingly, our farmers either fail to make the cut on some programs or they receive offers significantly lower to sell their development rights.

According to the recent comprehensive plan, 75% of Kent County is in farms. 28% of the farmland is already protected under various programs intended to compensate the landowner for preservation of his land.

These preservation programs are the proper way for government to implement its policy to conserve farmland. The farmers owning the remaining unpreserved land should enjoy the real value of their land and should not be handicapped in their efforts to preserve or work their farmland.

While it is easy for government to implement policy at the stroke of a pen, it is wrong to do so where property rights are taken away without compensation. Government programs that purchase those rights are the ethical approach to implement policy. In order for those programs to be fairly applied to Kent County farmers, the ten percent / enclave rule should be rescinded.

Very Truly Yours,



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C. Daniel Saunders

