TITLE 9. GROWTH ALLOCATION

§ 32-9-101. “GROWTH ALLOCATION” DEFINED.

In this title, “growth allocation” means the number of acres of land in the Chesapeake Bay Critical Area that the county may use to create new intensely developed areas and new limited development areas. (Bill No. 103-02, § 3, 7-1-2004; Bill No. 75-03, § 39, 7-1-2004)

§ 32-9-102. IN GENERAL.

(a) Total growth allocation acres. The total growth allocation for the county is 462 acres.

(b) Uses.

(1) One-half of the growth allocation acres may be used to reclassify resource conservation areas to either limited development areas or intensely developed areas.

(2) The remaining one-half of the acres may be used to reclassify limited development areas to intensely developed areas.
(c) *Allocation.* The county may award growth allocation acres subject to the distribution constraints established under this title.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004)

§ 32-9-103. ALLOCATION BY COUNTY; EXCEPTION.

(a) *In general.*

(1) Except as provided in subsection (b) of this section, the county may grant and approve in accordance with this title, growth allocation for all of its allotted acres.

(2) The Department of Environmental Protection and Sustainability shall record and maintain the apportionment of the allotted acres.

(b) *Exception.* The following acres have been allocated by the county:

(1) 100 acres that are reserved for those projects accepted by the county review group as of December 1, 1985;

(2) 22 acres that have been approved by the County Council through the phase 1 growth allocation process as adopted by Bill No. 35-88; and

(3) 50.23 acres that have been awarded through periodic design competitions, as set forth in § 32-9-112 of this title, as of December 1, 1993.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 122-10, § 12, 1-16-2011)

§ 32-9-104. LIMITATIONS.

(a) *Size restrictions for intensely developed areas.*

(1) In order for growth allocation to be awarded to a new intensely developed area, the area shall be:

(i) At least 20 acres; or

(ii) Adjacent to an existing intensely developed area or limited development area.

(2) Areas are considered adjacent even if they are separated by such features as a road or a stream.
(b) **Time limits for growth allocation applications.**

(1) Except for allocations described under § 32-9-103(b) of this title, the time limit for the validity of a plan or plat that involves a growth allocation application is subject to the provisions of §§ 32-4-261 through 32-4-274 of this article, inclusive.

(2) If the plan or plat lapses and becomes invalid, the growth allocation granted and approved shall be reapplied to the county's total and shall become available for reallocation.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 75-03, § 39, 7-1-2004)

§ 32-9-105. GROWTH ALLOCATION DEVELOPMENT REVIEW; REQUIRED.

A proposed development that involves growth allocation may not be exempt from the development review and approval process as provided under § 32-4-106(a) of this article.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 75-03, § 39, 7-1-2004)

§ 32-9-106. APPLICATION FOR GROWTH ALLOCATION.

(a) **In general.** A person applying for growth allocation shall submit an application with the Department of Permits, Approvals and Inspections that requires:

(1) County Council approval, with the concept plan or with the Development Plan, as required under Title 4, Subtitle 2 of this article; or

(2) County Board of Appeals approval, with the petition for reclassification, as required under Title 3, Subtitle 5 of this article.

(b) **Submission and review of application.**

(1) The Department of Permits, Approvals and Inspections shall forward the application to the Department of Environmental Protection and Sustainability.

(2) The Department of Environmental Protection and Sustainability shall:

(i) Have 7 working days to accept or reject the application;
(ii) Review the application to insure that sufficient preliminary information has been provided;

(iii) Prepare a check list that will delineate what preliminary information is required; and

(iv) Adopt and, when necessary, amend administrative procedures for the review of growth allocation applications, including the form of the application and the information necessary to review the application for acceptance.

(3) The Growth Allocation Review Committee shall review the application and make a recommendation on the application before forwarding it to the Planning Board.

(4) The Department of Environmental Protection and Sustainability shall forward the application to the Planning Board with the Growth Allocation Review Committee recommendation.

(c) Community input meeting.

(1) Before Planning Board review of a growth allocation application, a community input meeting shall be held, subject to the provisions of § 32-4-217 of this article.

(2) A community input meeting required after the submission of a concept plan and subject to the provisions of Title 4, Subtitle 2 of this article, may be combined with the community input meeting required after the submission of a growth allocation application.

§ 32-9-107. PROCEDURE IF APPLICATION IS INCOMPLETE.

(a) Explanation for rejection. If the Department of Environmental Protection and Sustainability rejects an application, the Department shall return the application to the applicant with a written explanation for its return.

(b) Resubmission of application

(1) An applicant may resubmit an application within 12 months after the final community input meeting is concluded or after an exemption is granted under § 32-4-106 of this article.

(2) If a reclassification is required, the applicant shall resubmit the application no later than 45 days before the beginning of the next succeeding cycle and shall be subject to §§ 32-3-504 through 32-3-508 of this article.
(3) If a request for exemption is made pursuant to § 32-3-509 of this article, the applicant shall resubmit the application before Planning Board action under § 32-3-509 of this article.
(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 122-10, § 12, 1-16-2011)

§ 32-9-108. PROCEDURE IF APPLICATION IS ACCEPTED.

The Department of Environmental Protection and Sustainability shall forward accepted applications to the Growth Allocation Review Committee, subject to the provisions contained in § 32-9-112 of this title, § 32-3-511 of this article, and Title 3, Subtitle 2, Part III of this article.
(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 108-05, § 2, 10-30-2005; Bill No. 122-10, § 12, 1-16-2011)

Editor's note:
The amendments enacted under § 2 of Bill 108-05 are effective retroactive to July 1, 2004.

§ 32-9-109. PROPOSED DEVELOPMENTS INVOLVING GROWTH ALLOCATION.

(a) In general. All proposed developments that involve requests for growth allocation shall be subject to the provisions of this title and Title 4 of this article

(b) Simultaneous review and processing.

(1) Notwithstanding the provisions of this section, a plan may continue to be reviewed and processed under the development regulations while the growth allocation application is being reviewed, processed and adjudged.

(2) The Hearing Officer may approve a Development Plan that involves a growth allocation request only upon the condition that the growth allocation is granted.

(3) If growth allocation is not granted, any change to a conditionally approved Development Plan shall be considered material.
(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004)

§ 32-9-110. GROWTH ALLOCATION REVIEW COMMITTEE.

(a) Members; Committee chair.

(1) The Growth Allocation Review Committee consists of the Directors or their designated representatives of:
(i) The Department of Environmental Protection and Sustainability;

(ii) The Office of Planning;

(iii) The Department of Permits, Approvals and Inspections;

(iv) The Department of Public Works;

(v) The Department of Recreation and Parks; and

(vi) The Department of Economic Development.

(2) The Director of Environmental Protection and Sustainability or Director's designated representative shall serve as chairman.

(b) Duties. The growth allocation review committee shall adopt and may amend its administrative procedures for the review of growth allocation applications under the provisions of this title.

§ 32-9-111. GROWTH ALLOCATION APPLICATIONS SUBJECT TO DESIGN EVALUATION FACTORS.

(a) In general. All growth allocation applications shall be subject to the design evaluation factors set forth by the Growth Allocation Review Committee.

(b) Factors for comparative evaluation. The Growth Allocation Review Committee shall use the design evaluation factors for comparative evaluation of the degree to which the growth allocation applications achieve the objectives of:

(1) Resource management and protection;

(2) Quality of design;

(3) Location; and

(4) Off-site community enhancement within the Chesapeake Bay Critical Area directly related to the proposal and its impacts.

(c) Burden of proof on applicant. The burden of proof is on the applicant to demonstrate that the application fulfills all of the design evaluation objectives.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 122-10, §§ 12, 30, 1-16-2011)
§ 32-9-112. DESIGN EVALUATION PROCEDURE; AWARD OF GROWTH ALLOCATION.

(a) In general. The procedures under this section for the design evaluation factors shall be used to award growth allocations in the Chesapeake Bay Critical Area.

(b) Procedures available for distribution.

(1) The Department of Environmental Protection and Sustainability shall have available for distribution copies of:

(i) The procedural and submission requirements; and

(ii) The evaluation objectives previously submitted to the Chesapeake Bay Critical Area Commission.

(2) The submission requirements and evaluation objectives are subject to review and revision by the Department of Environmental Protection and Sustainability or Growth Allocation Review Committee on an annual basis, if necessary.

(c) Map to show location of growth allocation. The Department of Environmental Protection and Sustainability shall prepare copies of the official county Chesapeake Bay Critical Area map and, if applicable, the official county zoning map showing the location of the requested growth allocations.

(d) Review and recommendations by Growth Allocation Review Committee to Planning Board. The Growth Allocation Review Committee shall review the submissions per the design evaluation objectives and make written recommendations to the Planning Board within 45 days after the receipt of the application by the Growth Allocation Review Committee.

(e) Review of Growth Allocation Review Committee recommendations.

(1) After giving public notice in one newspaper of general circulation at least 20 days before the meeting, the Planning Board shall hold one or more public meetings to review the recommendations of the Growth Allocation Review Committee.

(2) The meetings held by the Planning Board shall include:

(i) A presentation of the plan;

(ii) The recommendations by the Growth Allocation Review Committee; and

(iii) Public comment.
(3) During the period of notice, the plans with accompanying text and data, as well as the recommendations by the Growth Allocation Review Committee, shall be available for public inspection at the Department of Environmental Protection and Sustainability.

(f) *Notice posted on property subject to growth allocation plan.* At least 15 business days before the Planning Board’s public meeting, the county shall require to be conspicuously posted a notice of the date, time, and place of the meeting on the lot, parcel or tract that is the subject of the plan.

(g) *Reclassifications forwarded by Planning Board.*

(1) Within 30 days after the final public meeting, the Planning Board shall forward its recommendations that require an amendment of the Chesapeake Bay Critical Area Overlay Areas established under Article 33, Title 2, Subtitle 6 of the Code on the official Chesapeake Bay Critical Area Map to:

(i) The Board of Appeals for a final determination, under § 32-3-511 of this article; or

(ii) The County Council for a final determination if a zoning change to the official zoning map is required, subject to the provisions of § 32-3-224 of this article.

(2) (i) Notwithstanding any provision in this Code to the contrary, the Board of Appeals may amend the Official Chesapeake Bay Critical Area Map only when changes involving growth allocation are requested.

(ii) If changes are required to the official zoning map only or to both the official zoning map and to the Chesapeake Bay Critical Area Map, the application shall be referred to the County Council.

(h) *Amendments to maps.* The Department of Environmental Protection and Sustainability shall forward the proposed amendments to the official Chesapeake Bay Critical Area map or zoning map or both and all relevant information to the Chesapeake Bay Critical Area Commission for approval under § 8-1809(i) of the Natural Resources Article of the Annotated Code of Maryland.

(i) *Amendment to the official Chesapeake Bay Critical Area map.*

(1) In accordance with § 8-1809(o)(2) of the Natural Resources Article of Annotated Code of Maryland, the county shall incorporate the approved amendment to the official Chesapeake Bay Critical Area map into its local protection program within 120 days after receiving notice that this amendment has been approved by the Chesapeake Bay Critical Area Commission.

(2) The Department of Environmental Protection and Sustainability shall forward the amended official Chesapeake Bay Critical Area map reflecting changes approved by the Chesapeake Bay Critical Area Commission to:
(i) The chairman of the County Council for signature; or

(ii) The chairman of the Board of Appeals for signature if an amendment of the Chesapeake Bay Critical Area Overlay Areas on the map was made by the Board of Appeals under § 32-3-511 of this article.

(3) The Department of Environmental Protection and Sustainability shall forward a copy of the amended official Chesapeake Bay Critical Area map signed in accordance with paragraph (2) of this subsection to the Chesapeake Bay Critical Area Commission within the time frame specified in this subsection.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 103-02, § 3, 7-1-2004; Bill No. 108-05, § 2, 10-30-2005; Bill No. 122-10, § 12, 1-16-2011)

Editor's note:
The amendments enacted under § 2 of Bill 108-05 are effective retroactive to July 1, 2004.

§ 32-9-113. INTRAFAMILY TRANSFERS.

Notwithstanding the limitations established in this title, bona fide intrafamily transfers may be permitted subject to and in conformity with the provisions of § 8-1808.2, of the Natural Resources Article of the Annotated Code of Maryland.

(1988 Code, § 26-123) (Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1; Bill No. 51-94, § 1, 5-20-1994; Bill No. 95-94, §§ 1, 2, 7-12-1994; Bill No. 50-99, § 1, 7-12-1999; Bill No. 75-03, § 40, 7-1-2004)